

IN THE SUPREME COURT
OF THE
NORTH-WEST TERRITORIES.

BETWEEN

LE JEUNE, SMITH & Co., (Plaintiffs,) Appellants,

AND

T. B. LAFFERTY AND A. C. SPARROW, Defendants,

AND

H. A. SPARROW, (Defendant,) Respondent.

AMENDED APPEAL BOOK

SMITH & WATSON,
ADVOCATES FOR APPELLANTS.

LOUGHEED, MCCARTHY & McCARTER,
ADVOCATES FOR RESPONDENTS.

IN THE SUPREME COURT

ALFRED W. T. PETERSON

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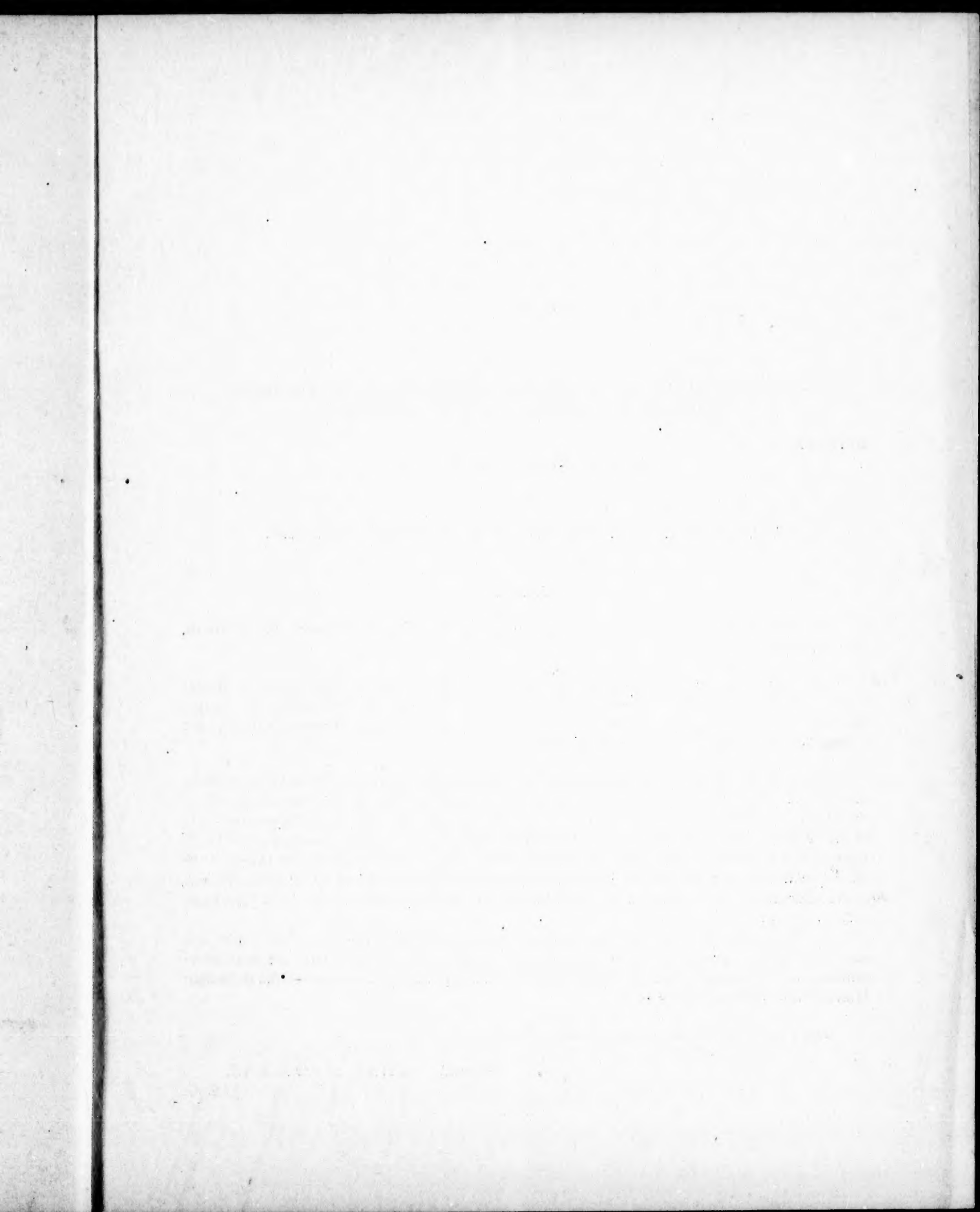
INDEX

1. The first part of the index is a list of the names of the authors of the papers in the volume. This list is arranged in alphabetical order of the authors' names. The names are given in full, including the first name, the middle name, and the last name. The names are given in the order in which they appear in the title page of the paper.

2. The second part of the index is a list of the titles of the papers in the volume. This list is arranged in alphabetical order of the titles. The titles are given in full, including the title, the subtitle, and the author's name. The titles are given in the order in which they appear in the title page of the paper.

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IN THE SUPREME COURT OF THE NORTH-WEST TERRITORIES.
NORTHERN ALBERTA JUDICIAL DISTRICT.

BETWEEN

LEJEUNE, SMITH & Co., Plaintiffs,

AND

T. B. LAFFERTY, A. C. SPARROW AND H. A. SPARROW, Defendants.

ORDER.

Upon the application of the plaintiffs, upon reading the affidavit of James Bruce Smith, filed, and proceedings herein ;

- 10 I do order that the time limited for the plaintiffs to file and serve their notice of appeal herein from the judgment delivered on the 19th April, 1892 by the Honorable Mr. Justice Rouleau, and to give security for the costs of appeal be and the same is hereby extended for a period of thirty days from the 3rd day of May next ;

And I do further order that the security to be given by the said plaintiffs shall be by bond in the sum of \$200.00 for the costs of such appeal, to be executed by the plaintiffs or one of them and two sureties who shall justify in the usual way ; and that the plaintiffs pay the costs of the defendant H. A. Sparrow within three days after taxation upon an undertaking of H. A. Sparrow's Advocates to repay such costs in the event of the same being allowed to the plaintiffs on the hearing of such appeal, and that such appeal may be entered and heard at the Sittings
20 of the Supreme Court in Banc, on the first Monday in December next instead of in June next.

And I do order that upon such bond being given and filed with the Clerk of the Court, and such costs paid, all proceedings other than the said appeal shall be stayed until the final determination of such appeal, costs of and incidental to this application to be costs to the defendant Harriet Ann Sparrow, in any event.

Dated at Calgary, this 2nd day of May, 1892.

(Signed,) CHAS. B. ROULEAU,
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IN THE SUPREME COURT OF THE NORTH-WEST TERRITORIES.
NORTHERN ALBERTA JUDICIAL DISTRICT.

BETWEEN

LEJEUNE, SMITH & CO., Plaintiffs,

AND

T. B. LAFFERTY, A. C. SPARROW AND H. A. SPARROW, Defendants.

NOTICE OF APPEAL.

Take Notice that the plaintiffs herein hereby appeal to the Supreme Court of the North-West Territories in banc, from the whole judgment pronounced in favor of the defendant H. A. Sparrow in this action by the Honorable Mr. Justice Rouleau on the 12th day of April, A. D. 1892, upon the following, among other grounds :—

1. That the said judgment is against evidence and the weight of evidence, the learned Judge holding that the plaintiffs knew that the defendant H. A. Sparrow was an accommodation endorser.

2. That the said judgment is contrary to law in that the learned Judge should not have held that the defendant H. A. Sparrow was released by reason of the plaintiffs having renewed the notes to which the note sued on was security during its currency, so that the renewal did not mature until after the note sued upon.

3. That the said judgment is contrary to law in as much as the learned Judge should have held that the defendant H. A. Sparrow waived any rights she might have had as surety by offering a renewal of said note sued upon after the maturity of the notes to which the said note sued upon was security.

4. That the said judgment is contrary to law in as much as the learned Judge should have held that A. C. Sparrow, the agent for the defendant H. A. Sparrow, had power, and exercised that power, to pledge the said note sued upon to the plaintiffs as security or otherwise, or that his power to use said note was unlimited, and being deposited as security with the plaintiffs as bona fide holders for value before maturity the plaintiffs were entitled to recover and

5. That the learned Judge erred in holding that the said H. A. Sparrow was a surety for the other defendants.

30 And Take Notice that the plaintiffs will move the said Court at Sittings to be holden at Regina in the North-West Territories on Monday the 4th day of December, A. D. 1892 at the hour of 10 o'clock in the forenoon, or so soon thereafter as the said Court shall sit in banc and as Counsel can be heard, to reverse the said judgment and enter judgment for the plaintiffs.

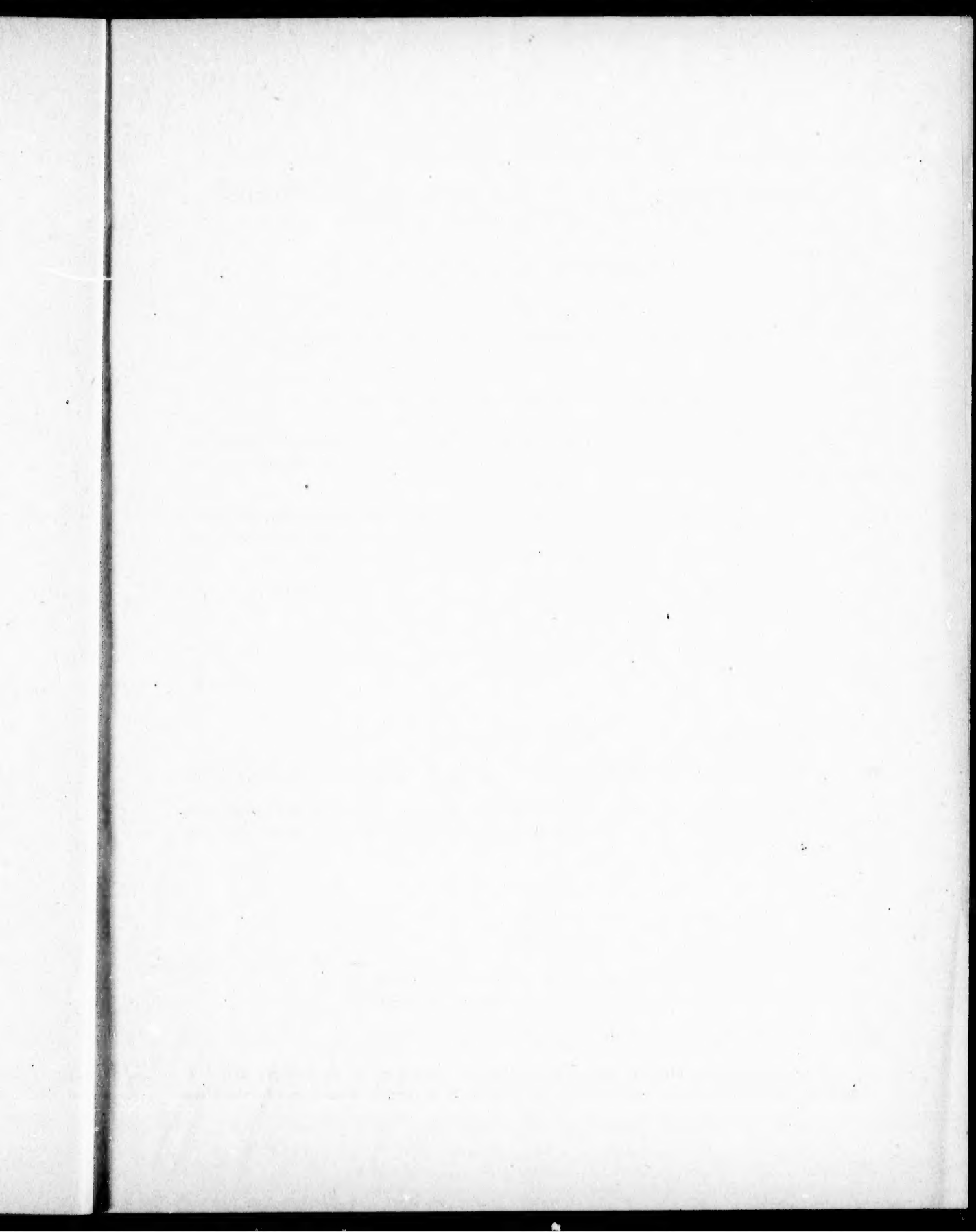
Dated at Calgary this 23rd day of May, A. D. 1892.

JAMES BRUCE SMITH,

Advocate for Plaintiffs.

To Messrs. Lougheed, McCarthy & McCaul,

Advocates for the defendant H. A. Sparrow.



IN THE SUPREME COURT OF THE NORTH-WEST TERRITORIES.
NORTHERN ALBERTA JUDICIAL DISTRICT.

BETWEEN

LEJEUNE, SMITH & Co., Plaintiffs,

AND

T. B. LAFFERTY, A. C. SPARROW AND H. A. SPARROW, Defendants.

Mc - AMENDED STATEMENT OF CLAIM.

The plaintiffs are private bankers carrying on business at Calgary within this Judicial District: the defendant Lafferty is an Advocate practising at Calgary aforesaid, and the defendants **10** H. A. Sparrow and A. C. Sparrow are ranchers residing near Calgary aforesaid.

2. The defendant T. B. Lafferty by his promissory note bearing date the 11th day of August, 1890, now over due, promised to pay to the defendant H. A. Sparrow or order three months after date, the sum of \$664.50, at the office of the plaintiffs at Calgary.

3. The defendant H. A. Sparrow indorsed the said note to the defendant A. C. Sparrow who indorsed the same to the plaintiffs.

4. The said note was duly presented for payment at the said office of the plaintiffs and payment thereof was refused.

5. The said note was dishonored.

6. The defendants had due notice of the said presentment and dishonor.

20 7. The defendants have not nor has either of them paid the said note or any part thereof.

8. By reason of the said non-payment of the said note the plaintiffs incurred expenses to the amount of \$3.03 in and about the presentment and protest of the said note and incidental to the dishonor thereof.

PARTICULARS.

1890. Nov. 14th.	To principal	\$664 50
	„ protest charges	3 03
		<u>\$667.53</u>

The plaintiffs claim \$667.53 and interest thereon from the 14th day of November, 1890 until payment or judgment.

30 9. And the plaintiffs in the alternative say:

That prior to and on the 8th day of May, 1890 the defendants T. B. Lafferty and A. C. Sparrow were indebted to the plaintiffs in divers sums of money, for money lent by the plain-

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tiffs to them at their request, amounting in all, with interest, to \$664.50, secured to the plaintiffs by the defendant T. B. Lafferty to the amount of \$80.00 and by notes of the defendants T. B. Lafferty and A. C. Sparrow to the amount of \$584.50, and on the said 8th day of May the defendant T. B. Lafferty, in consideration that the plaintiffs would give further time to him and the said A. C. Sparrow for the payment of the said sum of \$664.50 made his promissory note, dated 8th day of May, 1890, whereby he promised to pay to the order of the defendant A. C. Sparrow at the plaintiffs' office in Calgary, \$664.50, three months after date, and the said A. C. Sparrow indorsed the said note to the defendant H. A. Sparrow his wife, who at their request indorsed the same to the plaintiffs.

10 The said T. B. Lafferty then delivered the said note so indorsed to the plaintiffs as security to them for the payment of the said sum of \$664.50 and the several notes securing the same and any and all notes upon which the said T. B. Lafferty then was or might thereafter become liable to the plaintiffs.

11. On the maturity of the said note the plaintiffs at the request of the defendants renewed the same for the term of three months from the 11th day of August, 1890 and received as such renewal from the defendants the note sued upon in this action upon the same terms as they received the note mentioned in the 10th paragraph hereof.

12. On the said 8th day of May, 1890 the defendants T. B. Lafferty and A. C. Sparrow were indebted to the plaintiffs in the sum of \$171.00 upon a promissory note then over due, dated the 2nd day of March, 1890 made by T. B. Lafferty and indorsed by A. C. Sparrow to the plaintiffs, payable two months after date at the office of the plaintiffs at Calgary, and in the further sum of \$80.00 upon a certain other promissory note, dated April 28th, 1890 made by T. B. Lafferty to the plaintiffs payable ten days after date at the office of the plaintiffs at Calgary, the consideration of which notes formed part of the \$664.50 secured by the note sued upon herein, and which notes after being renewed became due and payable on the 24th day of November, 1890, and on the 28th day of November, 1890, respectively, but the defendants T. B. Lafferty and A. C. Sparrow did not, nor did either of them pay the said notes or either of them or any part thereof and the same remain wholly unpaid.

12a. The said notes for \$171.00 and \$80.00 were duly presented for payment and payment thereof was refused whereof the defendants had due notice.

13. The said note was duly presented for payment at the said office of the plaintiffs and payment thereof was refused.

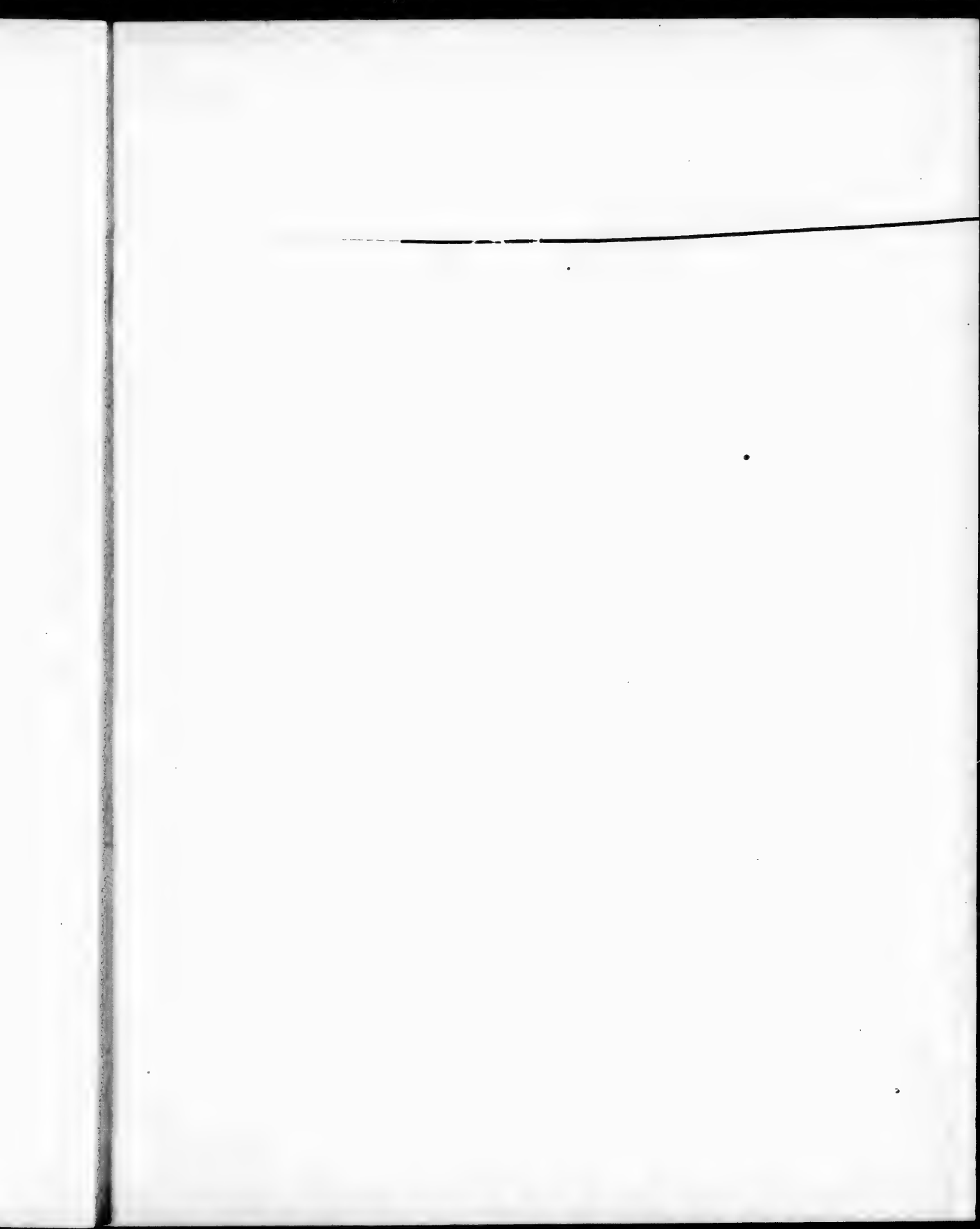
14. The said note was dishonored.

15. The defendants had due notice of the said presentment and dishonor.

16. The defendants have not nor has either of them paid the said note or any part thereof.

17. By reason of the said non-payment of the said note the plaintiffs incurred expenses to the amount of \$3.03 in and about the presentment and protest of the said note and incidental to the dishonor thereof.

Amended both paragraphs this 26th day of February, 1891 by order of Mr. Justice Rouleau.
Dated 26th day of February, A. D. 1891.



1. The plaintiffs claim the sum of \$664.50 and interest thereon from the 14th day of November, 1890, and protest charges \$3.03 \$667.53
2. Or in the alternative the plaintiffs claim \$171.00 and interest from the 24th day of November, 1890, and the sum of \$80.00 and interest thereon from the 28th day of November, 1890, also protest charges \$3.03 \$254.03
Part of the said sum of \$664.50.
3. A declaration that the said note of \$664.50 is the property of the plaintiffs as security for all notes upon which the defendant T. B. Lafferty is liable to the plaintiffs over and above the sum of \$254.03 and interest to the extent of \$664.50.
4. The plaintiffs ask the costs of this action.

Dated the 19th day of January, A. D. 1891, and Delivered by James Bruce Smith of the town of Calgary in the North-West Territories, Advocate for the plaintiffs, whose address is Calgary, Alberta.

IN THE SUPREME COURT OF THE NORTH-WEST TERRITORIES.
NORTHERN ALBERTA JUDICIAL DISTRICT.

BETWEEN

LE JEUNE, SMITH & CO., Plaintiffs, (Appellants,)

AND

T. B. LAFFERTY AND A. C. SPARROW, Defendants,

No. 1089.

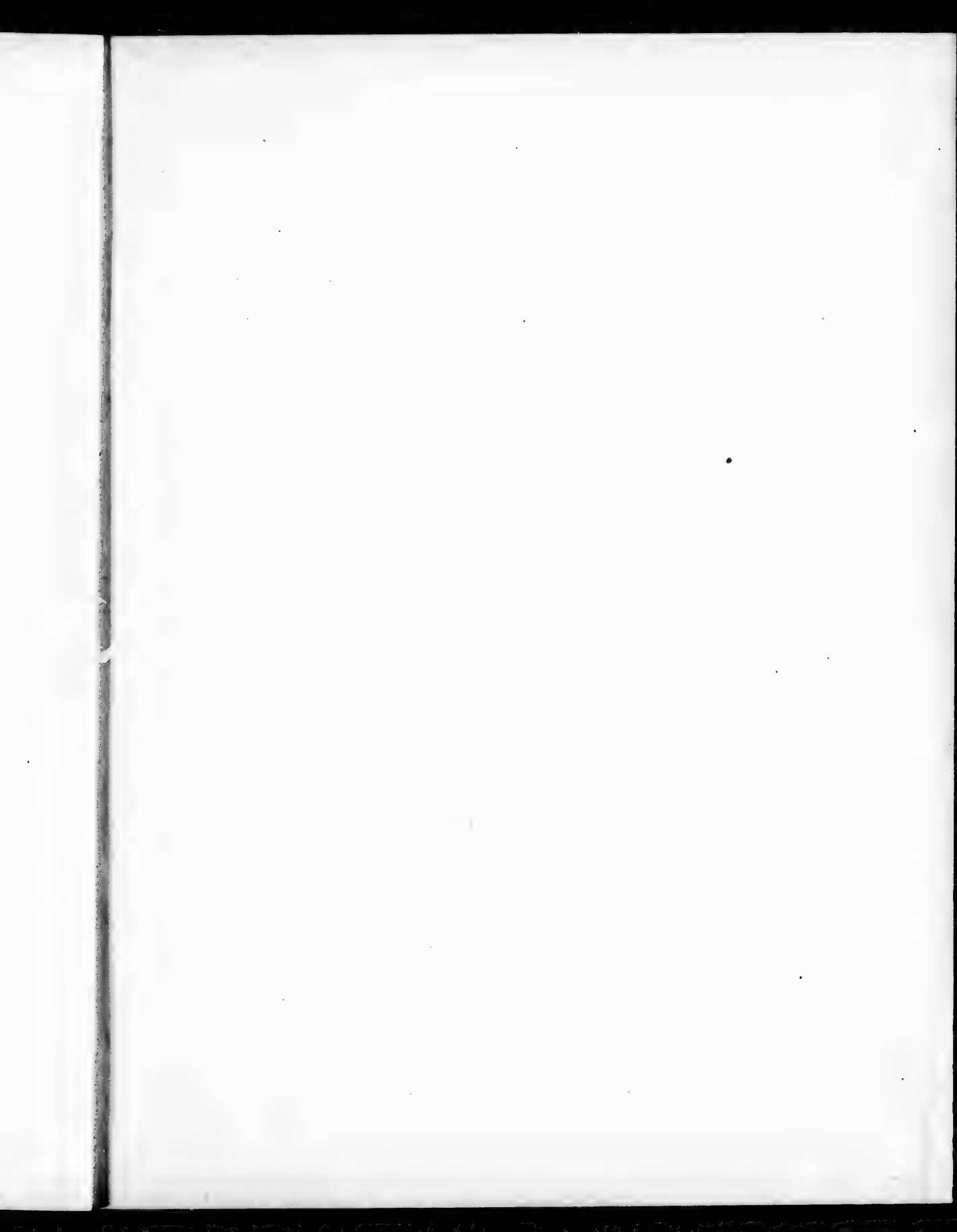
AND

H. A. SPARROW, Defendant, (Respondent.)

STATEMENT OF DEFENCE TO RE-AMENDED STATEMENT OF CLAIM.

The defendant H. A. Sparrow says :

1. The defendant H. A. Sparrow did not endorse the note mentioned in the second paragraph of the statement of claim.
2. The said note was not presented for payment.
3. The said note was satisfied and discharged by payment before action by the other defendants.
4. The defendant H. A. Sparrow had not due notice of the dishonor of said note.
5. The Plaintiffs were not the holders of the said note at the commencement of this action.



6. The defendant H. A. Sparrow was covert at the time of endorsing the said alleged note.

7. The defendant H. A. Sparrow endorsed the said note, if at all, at the request of the plaintiffs for the accommodation of the defendants T. B. Lafferty and A. C. Sparrow as collateral security to four certain promissory notes held by said plaintiffs against the said defendants T. B. Lafferty and A. C. Sparrow for \$313.50, \$171.00, \$100.00 and \$80 respectively, which said notes became due and payable respectively on the following dates: \$313.50 on August 25th, \$171.00 on August 15th, \$100.00 on August 27th, and \$80.00 on August 22nd, all in the year 1890.

8. The said defendant H. A. Sparrow in so endorsing the said note, was to the knowledge 10 of the plaintiffs a surety only for the said T. B. Lafferty and A. C. Sparrow for the payment of the said notes \$313.50, \$171.00, \$100.00 and \$80.00 to the said plaintiffs as the same became due according to the tenor thereof.

9. The plaintiffs on the maturity of the four said notes respectively, in pursuance of a binding agreement between them and the defendants T. B. Lafferty and A. C. Sparrow extended the time of payment thereof by the said defendants T. B. Lafferty and A. C. Sparrow and thereby released the said defendant H. A. Sparrow

10. On the 25th day of August last, the defendants T. B. Lafferty and A. C. Sparrow paid \$13.50 on account of the said \$313.50 note and gave their renewal for the balance of \$300.00 to the said plaintiffs payable one month after the date thereof, and the said \$300.00 note has been 20 renewed by the plaintiffs for the said defendants T. B. Lafferty and A. C. Sparrow from time to time since the said 25th day of August and was at the commencement of this action current and not yet due; and the said \$100.00 note after being renewed several times was not due until the 5th day of January, 1891.

11. The last renewal notes given in substitution of the four notes mentioned in the fifth paragraph hereof were before the same respectively became due endorsed for value by the plaintiffs to the Bank of Montreal, or were before the same respectively became due deposited for value by the plaintiffs with the said Bank of Montreal with the right to the said Bank of Montreal to endorse the same for and in the name of the plaintiffs, and were at the commencement of this action outstanding in the possession of the Bank of Montreal.

12. The defendant H. A. Sparrow did not endorse the note of the 8th May, 1890 for \$664.50 30 mentioned in the ninth paragraph of the statement of claim at the request of her co-defendants or otherwise.

13. That defendant H. A. Sparrow was covert at the time of endorsing the last mentioned note

15. The last mentioned note was not, nor was the renewal thereof mentioned in the 11th paragraph of the amended statement of claim, delivered to the plaintiffs by the defendant Lafferty as security to them for the payment of any and all notes upon which the defendant Lafferty was then or might thereafter be liable to the plaintiffs.

16. The defendant H. A. Sparrow will object that the statement of claim shows no power

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or authority from her to the defendant T. B. Lafferty to agree with the plaintiffs that the said last mentioned note should be a security to them for any and all notes upon which the defendant Lafferty was then or might thereafter become liable.

17. The defendant H. A. Sparrow will further object that in the absence of any allegation that the defendant Lafferty was authorized by the defendant H. A. Sparrow as aforesaid the 12th paragraph of the amended statement of claim shows that the plaintiffs by a binding agreement without the consent of the defendant H. A. Sparrow extended the time for payment of the several notes to which the note \$664.50 was collateral security and on which the defendant H. A. Sparrow was only an accommodation endorser and a surety and thereby discharged the
10 defendant H. A. Sparrow.

Dated at Calgary this 2nd day of March, 1891 and delivered by Lougheed, McCarthy & Beck, Advocates for H. A. Sparrow.

No. 1089.

REPLY.

The plaintiffs in answer to the amended statement of defence of H. A. Sparrow say :

1. That they join issue on the 1st, 2nd, 3rd, 4th, 5th, 7th, 8th, 9th, 10th, 11th, 12th and 14th paragraphs thereof.

And in answer to the 6th and 13th paragraphs thereof say :

1. That the defendant H. A. Sparrow at the time of the endorsement by her and the delivery of the promissory note, sued upon in this action, was and ever since has been possessed of
20 separate estate.

Delivered this 4th day of March, A. D. 1891, by James Bruce Smith of the town of Calgary in the District of Alberta, Advocate for the plaintiffs.

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IN THE SUPREME COURT OF THE NORTH-WEST TERRITORIES.
NORTHERN ALBERTA JUDICIAL DISTRICT.

BETWEEN

LE JEUNE, SMITH & Co., Plaintiffs, (Appellants,)

AND

T. B. LAFFERTY AND A. C. SPARROW, Defendants.

No. 1186.

AND

H. A. SPARROW, Defendant, (Respondent.)

STATEMENT OF CLAIM.

10 The plaintiffs are private bankers carrying on business at Calgary within this Judicial District; the defendant Lafferty is an Advocate practising at Calgary aforesaid, and the defendants H. A. Sparrow and A. C. Sparrow are Ranchers residing near Calgary aforesaid.

2. The defendant T. B. Lafferty by his promissory note bearing date the 11th day of August, 1890, now over due, promised to pay to the defendant H. A. Sparrow or order, three months after date the sum of \$664.50, at the office of the plaintiffs at Calgary.

3. The defendant H. A. Sparrow indorsed the said note to the defendant A. C. Sparrow who indorsed the same to the plaintiffs.

4. The said note was duly presented for payment at the said office of the plaintiffs and payment thereof was refused.

20 5. The said note was dishonored.

6. The defendants had due notice of the said presentment and dishonor.

7. The defendants have not nor has either of them paid the said note or any part thereof.

8. By reason of the said non-payment of the said note the plaintiffs incurred expenses to the amount of \$3.03 in and about the presentment and protest of the said note and incidental to the dishonor thereof.

PARTICULARS.

1890. Nov. 14th.	To Principal.....	\$664.50
	„ Protest Charges.....	3.03 \$667.53

The plaintiffs claim \$667.53 and interest thereon from the 14th day of November, 1890, until payment or judgment.

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9. And the plaintiffs in the alternative say :

That prior to and on the 8th day of May, 1890, the defendants T. B. Lafferty and A. C. Sparrow were indebted to the plaintiffs in divers sums of money, for money lent by the plaintiffs to them at their request, amounting in all, with interest, to \$664.50, secured to the plaintiffs by notes of the defendant T. B. Lafferty to the amount of \$80.00, and by notes of the defendants T. B. Lafferty and A. C. Sparrow to the amount of \$584.50, and on the said 8th day of May the defendant T. B. Lafferty, in consideration that the plaintiffs would give further time to him and the said A. C. Sparrow for the payment of the said sum of \$664.50, made his promissory note dated 8th May, 1890, whereby he promised to pay to the order of the defendant A. C. Sparrow, 10 at the plaintiffs' office in Calgary, \$664.50, three months after date, and the said A. C. Sparrow indorsed the said note to the defendant H. A. Sparrow, his wife, who at their request indorsed the same to the plaintiffs.

10. The said T. B. Lafferty then delivered the said note so indorsed to the plaintiffs as security to them for the payment of the said sum of \$664.50 and the several notes securing the same and any and all notes upon which the said T. B. Lafferty then was or might thereafter become liable to the plaintiffs.

11. On the maturity of the said note the plaintiffs at the request of the defendants renewed the same for the term of three months from the 11th day of August, 1890 and received as such renewal from the defendants the note sued upon in this action upon the same terms as they 20 received the note mentioned in the 10th paragraph hereof.

12. On the said 8th day of May, 1890, the defendants T. B. Lafferty and A. C. Sparrow were indebted to the plaintiffs in the sum of \$100.00 upon a promissory note dated the 18th day of March, 1890, made by T. B. Lafferty and indorsed by A. C. Sparrow to the plaintiffs payable three months after date at the office of the plaintiffs at Calgary, which note after being renewed by a note made by T. B. Lafferty and A. C. Sparrow finally became due on the 5th day of January, 1891; and in the further sum of \$300.00 upon a certain other promissory note dated the 18th February, 1890, made by T. B. Lafferty and indorsed by A. C. Sparrow payable three months after date to the plaintiffs at their office at Calgary, which note was renewed on the 1st day of November, 1890, by a note made by T. B. Lafferty and A. C. Sparrow, and such 30 renewal became due to the plaintiffs on the 4th day of February, 1891. The consideration of which two notes formed part of the \$664.50 secured by the note sued upon herein and were duly presented for payment and payment thereof was refused whereof the defendants had due notice, but the defendants T. B. Lafferty and A. C. Sparrow did not nor did either of them pay the said notes or either of them or any part thereof and the same remain wholly unpaid.

13. The said note of \$664.50 was duly presented for payment at the said office of the plaintiffs and payment thereof was refused.

14. The said note was dishonored.

15. The defendants had due notice of the said presentment and dishonor.

16. The defendants have not nor has either of them paid the said note or any part thereof.

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1. The plaintiffs claim the sum of \$664.50 and interest thereon from the 14th day of November, 1890.

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2. Or in the alternative the plaintiffs claim \$100.00 and interest thereon from the 1st day of November, 1890, and the sum of \$300.00 and interest thereon from the 4th day of February, 1891, part of the said sum of \$664.50.
 3. A declaration that the said note of \$664.50 is the property of the plaintiffs as security for all notes upon which the defendant T. B. Lafferty is liable to the plaintiffs over and above the sum of \$400.00 and interest to the extent of \$664.50.
 - 4 The plaintiffs ask for the costs of this action.

Delivered this 9th day of March, A. D. 1891, by James Bruce Smith of the town of Calgary in the District of Alberta, Advocate for the Plaintiffs, whose address is Calgary, Alberta.

10 IN THE SUPREME COURT OF THE NORTH-WEST TERRITORIES.
 NORTHERN ALBERTA JUDICIAL DISTRICT.

BETWEEN

LE JEUNE, SMITH & CO., Plaintiffs, (Appellants,)

AND

T. B. LAFFERTY AND A. C. SPARROW, Defendants,

No. 1186.

AND

H. A. SPARROW, Defendant, (Respondent.)

STATEMENT OF DEFENCE.

The defendant H. A. Sparrow says :—

- 20** 1. The defendant H. A. Sparrow did not endorse the note mentioned in the second paragraph of the statement of claim.

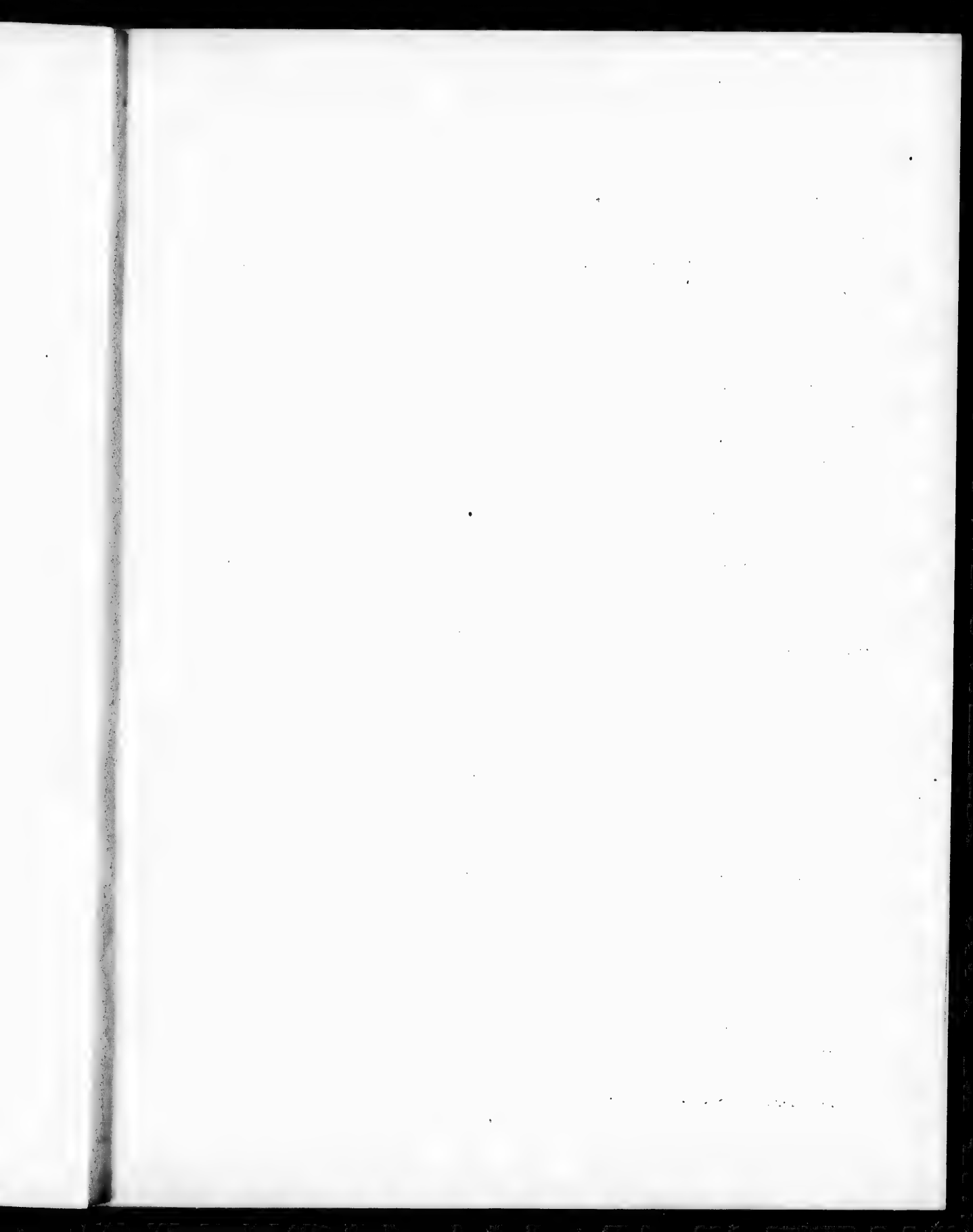
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2. The said note was not presented for payment.
3. The said note was satisfied and discharged by payment before action by the other defendants.
4. The defendant H. A. Sparrow had not due notice of the dishonor of said note.
5. The plaintiffs were not the holders of the said note at the commencement of this action.
6. The defendant H. A. Sparrow was covert at the time of endorsing the said alleged note.
7. The defendant H. A. Sparrow endorsed the said note, if at all, at the request of the plaintiffs for the accommodation of the defendants T. B. Lafferty and A. C. Sparrow as collateral security to four certain promissory notes held by said plaintiffs against the said defendants
 10 T. B. Lafferty and A. C. Sparrow for \$313.50, \$171.00, \$100.00, and \$80.00 respectively, which said notes became due and payable respectively on the following dates: \$313.50 on August 25th, \$171.00 on August 15th, \$100 on August 27th and \$80 on August 22nd, all in the year 1890.
8. The said defendant H. A. Sparrow in so endorsing the said notes, was to the knowledge of the plaintiffs a surety only for the said T. B. Lafferty and A. C. Sparrow for the payment of the said notes, \$313.50, \$171.00, \$100.00 and \$80.00 to the said plaintiffs as the same became due according to the tenor thereof.
9. The plaintiffs on the maturity of the four said notes respectively, in pursuance of a binding agreement between them and the defendants T. B. Lafferty and A. C. Sparrow extended the time of payment thereof by the said defendants T. B. Lafferty and A. C. Sparrow and thereby released the said defendant H. A. Sparrow.
 20
10. On the 25th day of August last the defendants T. B. Lafferty and A. C. Sparrow paid \$13.50 on account of the said \$313.50 note and gave their renewal for the balance of \$300.00 to the said plaintiffs payable one month after the date thereof and the said \$300.00 note has been renewed by the plaintiffs for the said defendants T. B. Lafferty and A. C. Sparrow from time to time since the said 25th day of August and the said \$100.00 note after being renewed several times was not due until the 5th day of January, 1891.
11. The last renewal notes given in substitution of the four notes mentioned in the fifth paragraph hereof were before the same respectively became due endorsed for value by the plaintiffs
 30 to the Bank of Montreal, or were before the same respectively became due deposited for value by the plaintiffs with the said Bank of Montreal with the right to the said Bank of Montreal to endorse the same for and in the name of the plaintiffs, and were at the commencement of this action outstanding in the possession of the Bank of Montreal.
12. The defendant H. A. Sparrow did not endorse the note of the 8th May, 1890 for \$664.50 mentioned in the ninth paragraph of the statement of claim at the request of her co-defendants or otherwise.



13. The defendant H. A. Sparrow was covert at the time of the endorsing the last mentioned note.

14. The last mentioned note was not nor was the renewal thereof mentioned in the 11th paragraph of the amended statement of claim, delivered to the plaintiffs by the defendant Lafferty as security to them for the payment of any and all notes upon which the defendant Lafferty was then or might thereafter be liable to the plaintiffs.

15. The defendant H. A. Sparrow will object that the statement of claim shows no power or authority from her to the defendant T. B. Lafferty to agree with the plaintiffs that the said last mentioned note should be a security to them for any and all notes upon which the defendant Lafferty was then or might thereafter become liable.

16. The defendant H. A. Sparrow will further object that in the absence of any allegation that the defendant Lafferty was authorized by the defendant H. A. Sparrow as aforesaid the 12th paragraph of the amended statement of claim shows that the plaintiffs by a binding agreement without the consent of the defendant H. A. Sparrow extended the time for payment of the several notes to which the note \$664.50 was collateral security and on which the defendant H. A. Sparrow was only an accommodation endorser and a surety and thereby discharged the defendant H. A. Sparrow.

Dated at Calgary this 25th day of April, 1891 and Delivered by Messrs. Loughheed, McCarthy & Beck of the town of Calgary in the District of Alberta, Advocates for the defendant H. A. Sparrow.

REPLY.

The plaintiffs in answer to the defence of H. A. Sparrow say :—

1. That they join issue on the 1st, 2nd, 3rd, 4th, 5th, 7th, 8th, 9th, 10th, 11th, 12th, 14th paragraphs thereof.

And in answer to the 6th and 13th paragraphs thereof say :

1. That the defendant H. A. Sparrow at time of the endorsement and delivery of the promissory note sued upon in this action was and ever since has been possessed of separate estate.

Delivered this 28th day of April, A. D. 1891 by James Bruce Smith of the town of Calgary in the District of Alberta, Advocate for the Plaintiffs.

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IN THE SUPREME COURT OF THE NORTH-WEST TERRITORIES.
NORTHERN ALBERTA JUDICIAL DISTRICT.

BETWEEN

LE JEUNE, SMITH & Co., Plaintiffs.

No. 1089.

AND

T. B. LAFFERTY, H. A. SPARROW and A. C. SPARROW, Defendants.

AND

LE JEUNE, SMITH & Co., Plaintiffs,

No. 1186.

AND

10 T. B. LAFFERTY, H. A. SPARROW and A. C. SPARROW, Defendants.

Upon the application of the plaintiffs, and upon reading the consent of the defendants, by their Advocates,

I do Order that the above two actions do stand consolidated and be treated hereafter and be carried on as one action under the second mentioned style of cause, and that the order setting down notice of trial, and setting down already made number 1089, do stand for the action as now consolidated.

Dated at Chambers this 4th day of May, A. D. 1891.

(Signed) CHAS. B. ROULEAU, J. S. C.

JUDGES' NOTES OF EVIDENCE.

20 The evidence taken on discovery of T. N. Christie and H. A. Sparrow to be put in by plaintiffs by consent, with the right of either party to re-examine and cross-examine Mr. Christie. That the evidence of A. C. Sparrow and T. B. Lafferty are to be put in by defendant with same right. The defendant undertakes to produce A. C. Sparrow. The endorsements of H. A. Sparrow on both notes are admitted. Regularity of protests admitted.

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EVIDENCE ON BEHALF OF PLAINTIFFS.

T. N. CHRISTIE on oath says :—

Am a member of plaintiffs' firm. Plaintiffs were holders of exhibit A. That note has not been paid. Exhibit B was taken as renewal of exhibit A. Exhibit F referring to the \$350.00 note was the only one produced at the examination. The others I identify and I produce as exhibit F 1, 2, 3, 4, 5, 6. Took the \$564.50 note in consideration that I would not sue the other notes that became due but renew them. I mean that I was not to sue defendants Lafferty and A. C. Sparrow for any notes becoming or past due with their names on, and amongst those papers there were notes of \$80.00, \$100.00, \$171.00 and \$313.50. As those notes matured I repeatedly
10 asked Lafferty and Sparrow to pay them, and they promised to do so. Told them that if they would not give me further security that I would sue them. Lafferty then told me, I have no further security to give you. But Mrs. Sparrow owes me between \$600.00 and \$700.00 and if I would take her endorsement upon a note; I answered, if you cannot do better, I will. And he came in a day or two after with the note endorsed by Mrs. Sparrow. The note was in its complete form when brought to me. Had no reason to suppose at that time that Mrs. Sparrow endorsed the note for Lafferty's accommodation, nor had I ever since, except when the note was sued upon. None of my firm was ever notified that Mrs. Sparrow was an endorser for accommodation. Whatever was done with this note, was done here at the Calgary branch, by either myself or Clerk. When exhibit B became due on 11th of August, 1890, took renewal, exhibits A and B had gone to protest
20 and Lafferty brought me exhibit A, after the protest of exhibit B Lafferty told me, when asked to take it up, all he could do was to renew it, and brought me exhibit A. I think he came alone. The note was filled up and a complete note when handed to me. Took the notes exhibits B and A as security for paper then held by me for monies advanced. The security was for the purpose of getting my money back, in the ordinary course of banking business. It was an ordinary transaction of banking business. I considered that Mrs. Sparrow was worth the money; that is the reason I accepted her, if Lafferty could not do any better. Would not have extended the time of those notes if I had not known she was the owner of property. A. C. Sparrow said to me: "I don't know why you sue or press those claims, you have Mrs. Sparrow as security, surely that is good enough, and as soon as Mrs. Sparrow would get a loan through on
30 her land, this note would be taken up." This conversation took place before the suit, and after exhibit A became due. After that a third renewal was brought to me and I refused it, Mrs. Sparrow's name was on that, because I had been humbugged long enough, and I wanted to get paid. As far as I know Mr. Sparrow managed the affairs of Mrs. Sparrow. Exhibits B and A were never demanded by the defendants and they are still in our hands and produced in this case. The note B and renewal A were given to me to cover any paper held with Lafferty's name on it. I took the security for the money owed to our bank, and to secure a debt.

CROSS-EXAMINED.—The plaintiffs are private bankers. Am a member of that firm. Have been in banking business for fifteen or sixteen years. Exhibit A was given to me as extra security for our own debt. Was given to understand the note was endorsed for T. B. Lafferty by
40 Mrs. Sparrow because she owed him \$600.00 or \$700 for lumber. Was satisfied with her name on note. The note was brought in answer to my request for security. When first handed to me, the memorandum in pencil was not on it, it was not three minutes before it was put on it. Before the note B was given, Lafferty may have got a memo. of the four notes owed me. In my own mind now I think note B was made to represent the amount of the four notes, but did

not make up the amount then, and I did not know it was. It was handed to me as extra security.

RE-EXAMINED.—Note B was amount of security brought into me and I did accept of it. Nothing to show me that Mrs Sparrow had not got the value for the note, simply by the fact that her name was on the back of it.

RE-CROSS-EXAMINED.—The note sued on was as security for the four notes.

This closes the plaintiffs case.

EVIDENCE ON BEHALF OF DEFENDANTS.

Examination of T. B. Lafferty put in, with exception of what he states, concerning his 10 counter-claim.

Examination of A. C. Sparrow put in by consent on behalf of defendants :—

A. C. SPARROW on oath is called for the purpose of cross-examination on his evidence just put in. Know the note of \$654 in question and the note given as a renewal. On the 8th May, 1890 my wife's farm was rented at the time to a man named Botternhamere; he had it on shares, had nothing to do with the management of it. The property is owned by my wife and I act as her agent—generally receive the notice of protest for Mrs. Sparrow. Whenever I require a note I ask her to sign it. Never applied to J. B. Smith for a loan of money on my wife's property to take up that note; but applied to him for a loan sometime last winter, I think, I cannot swear. It was before or after the writ was issued in this case. I think the 20 amount I wanted to loan was \$1000.00 through J. B. Smith. Don't remember to have said to him not to do anything with the note, till I would see if the loan got through or not. I may have done so. Don't remember to have said that if the loan got through the note would be paid out of the proceeds of the loan. Don't think I ever did say so. Mr. Christie wanted my wife's name because he considered her good being the owner of the property. My wife's property is the one on which she lives; she still owns it. This closes the defendants case.

EXAMINATION OF THOMAS N. CHRISTIE.

The examination of Thomas Nichol Christie taken before me this 20th day of May, A. D. 1891, under an appointment dated the 18th day of May 1891, this the 20th day of May, A. D. 1891.

Thomas Nichol Christie, being sworn was examined by Mr. McCarthy:—

I am a member of the firm of Le Jeune, Smith & Co., the plaintiffs. I produce the first note sued on dated 11th August, 1890. The consideration for this note (was not for money advanced on this note) it was a renewal for another note of similar amount. The consideration for exhibit B (T. B. L.) was for paper due in the office of Le Jeune, Smith & Co., a number of 10 notes with his name on. When exhibit B was given there was no special note to cover. I did not know how it happened that the amount \$664.50 was put in at that time. The plaintiffs held four notes with Lafferty's name on, \$100.00, \$80.00, \$171.00, \$313.50. When I got exhibit B I did not make any further advance on it. I did not make any further advance on it at all. I did not ask Mr. Lafferty how that amount was made up. I cannot tell you what notes were overdue when I got exhibit B from Lafferty. I think the four notes were current when this note was given. I don't think on the day that note was given I took any new notes or renewals from him. Mr. Scott was present when the note was given me. I did not have any conversation in particular with Mr. Lafferty in reference to the four notes. If he asked for a statement he may have got one. The note was filled up when 20 handed to me. When first handed to me it had not the pencil memoranda there. I asked Lafferty if this note was to cover anything in particular and he said "No, Christie; this is to cover any paper with my name on, and I will keep reducing the amount and you can hold this as collateral until my paper is paid." I do not know why he came in on that particular day. There was no paper past due, and I was not in a position to sue him at that time. I could tell by my books when I got the note. I received it on the 9th of May, 1890, as appears by collection register. Entry in book in red ink is made by Mr. Scott at the time the note was entered. The \$313.50 note first matured after the 8th May on May 21st, 1890; it was for \$300.00 and \$13.50 interest. I renewed this note on May 21st, 1890, for three months, and when due on the 25th August, I renewed it for one month and on September 29th I renewed it for one month; 30 on November 1st, 1890, I renewed it for three months. This was the last renewal. The \$171.00 note was not current when I got the \$664.50. It was past due and not renewed till May 10th and ante dated as appears by collection register; when this came due it was renewed for one month five times. October 21st is the last renewal I have. I had a note for \$100.00 when I got the \$664.50 note. \$100.00 dated 8th March three months, 21st June renewed one month, 24th July renewed one month, 27th August renewed one month, 29th September renewed one month, 1st November renewed two months due January 5th, 1890 is the last renewal I have. I had a note for \$80.00 when I got the \$664.50 on May 12th; it was renewed for one month; on June 16th renewed for one month; on July 19th renewed for one month; on August 22nd renewed for one month; on September 25th renewed for one month; on October 25th renewed 40 for one month. This is the last renewal I have. On the 8th May I had other notes with Lafferty's name on, outside of Sparrows'. At the time I received this note (\$664.50) I held a note of T. B. Lafferty for \$180.00; it was dated April 14th, payable in 30 days. I gave the money to him, I think; this note was paid. I also had with Lafferty's name on one for \$324.00 dated March 21st, made by one J. T. Johnson, payable to T. B. Lafferty, four months after date; this

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note was paid before this action was commenced. I also held on May 8th, 1890, one of \$212.00 dated April 22nd for three months, made by one Miles. This was paid before this action commenced. I also held one for \$3976.70; this was the note given in connection with the purchase of the horses. I held a mortgage for \$3,800.00 and interest. The \$3976.70 was a renewal note; the note has not been paid. I do not know how much is due on the note or mortgage now owing to expenses in connection with the horses which I have not got in. There may have been other notes held on the 9th May, but I cannot recollect just now, I am not aware of any other notes that the firm was interested in that they held on the 9th May, 1890, that were not paid at the commencement of this action other than those I have mentioned. When I asked ^{to} him to get security I did not ask him to get Mrs. Sparrows name. I told him I must have further security and as a result of that he brought me the note. When the note (\$664.50) matured I got exhibit A I received it on August 27th; as exhibit B had gone to protest it was dated August 11th as the former one was due on the 11th August. Lafferty brought this to me, as a renewal of exhibit B and I accepted it as security renewing the other. Another note was offered me as a renewal of exhibit A when it matured, but I did not take it. As I was not going to wait any longer, I was going to sue as the paper matured.

This closed the examination by Mr. McCarthy, no questions by Mr. Davis.

(Signed) THOS. N. CHRISTIE.

Taken before me this 20th day of May, A. D. 1891.

(Signed) EDWIN R. ROGERS,
Clerk of the Court.

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EXAMINATION OF H. A. SPARROW.

The examination of the above named defendant H. A. Sparrow, taken by consent before me this 23rd day of November, A. D. 1891.

Mr Smith for Plaintiffs.

Mr. McCarthy for defendants.

Harriet Ann Sparrow being sworn deposeth as follows :

To Mr. Smith.

I am one of the above named defendants. The endorsements by H. A. Sparrow on exhibit A and B are admitted to be in the handwriting of H. A. Sparrow. When I signed exhibit B 10 on the 8th of May, 1890, nothing took place except the signing of the name. I did not know what I was signing. I don't know yet. Didn't know what it was. Don't remember of any one being present except my husband and myself. Have no recollection whatever about it. Don't know yet what they, the exhibits, are. Have no better recollection regarding exhibit A than exhibit B. Have no recollection of signing exhibits. Am in the habit of signing notes for my husband without enquiring for particulars but supposed generally that they were for retiring other notes. Supposed at the time that he would not use them for any improper purpose. When I endorsed exhibits A and B I gave my husband no instructions whatever what to do with them. My husband was at that time acting as manager of the farm and business for me and has continued to do so since. On 8th of May, 1890, I was the owner of the property 20 the South-West Quarter of Sec. 3, Tp. 24 and Range 1 West of the 5th Principal Meridian, and am still the owner and am the party who agreed with the C. P. R. to purchase the North-East Quarter of said section. At that time I owned some chattel property and the buildings on the above described land. I was not indebted to T. B. Lafferty at that time for anything that I am aware of. I did not see Mr. Lafferty about any note. Do not remember of having any business at all with Mr. Lafferty. Mr. Sparrow had a right to use exhibits A and B as he wished as far as I was concerned. Never had any conversation with any member of the firm of LeJeune, Smith & Co., Plaintiffs, in connection with these notes. I am still the owner of the land above described.

(Signed) H. A. SPARROW.

30 (Signed) J. A. BANGS, Examiner.

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EXHIBIT A.

\$664.50.

Calgary, Aug. 11th, 1890.

Three months after date I promise to pay to the order of H. A. Sparrow,
Six Hundred and Sixty-four 50/100 Dollars, at the office of Le Jeune, Smith &
Co., here. Value received.

T. B. LAFFERTY.

NOTARIAL MEMORANDUM.—Presented for payment and protested for non-payment by me this
14th day of November, 1890. (Signed) J. B. SMITH, Notary Public.

Endorsed as follows :—H. A. Sparrow. A. C. Sparrow.

EXHIBIT B.

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\$664.50.

Calgary, May 8th, 1890.

Three months after date I promise to pay to the order of A. C. Sparrow
Six Hundred and Sixty-four 50/100 Dollars, at the office of Le Jeune, Smith &
Co. here. Value received.

T. B. LAFFERTY.

NOTARIAL MEMORANDUM.—Presented for payment and protested for non-payment by me
this 11th day of August, A. D. 1890. (Signed) J. B. SMITH, Notary Public

Endorsed as follows :—A. C. Sparrow. H. A. Sparrow.

PENCIL MEMO ENDORSED.—This note is collateral to any paper held by Le Jeune, Smith
& Co. with my name on. (Signed) T. B. LAFFERTY.

EXHIBIT C.

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\$80.00.

D No. 2625.

Due Nov. 28th.

Calgary, Oct. 25th, 1890.

One month after date I promise to pay to the order of LeJeune, Smith & Co.
Eighty Dollars, at the office of LeJeune, Smith & Co. here.

T. B. LAFFERTY.

EXHIBIT D.

\$171.00.

D No. 2601.

Due Nov. 24th.

Calgary, Oct. 21st, 1890.

One month after date I promise to pay to the order of LeJeune, Smith & Co.
One Hundred and Seventy-one Dollars, at the office of LeJeune, Smith & Co.,
here. Value received.

T. B. LAFFERTY.

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EXHIBIT E.

\$100.00.

D No. 2648

Due Jany. 5th, '91.

Calgary, 1st November, 1890.

Two months after date I promise to pay to the order of LeJeune, Smith & Co., One Hundred Dollars, at the office of Le Jeune, Smith & Co., here. Value received.

T. B. LAFFERTY.

A. C. SPARROW.

EXHIBIT F.

\$300.00.

D No. 2649.

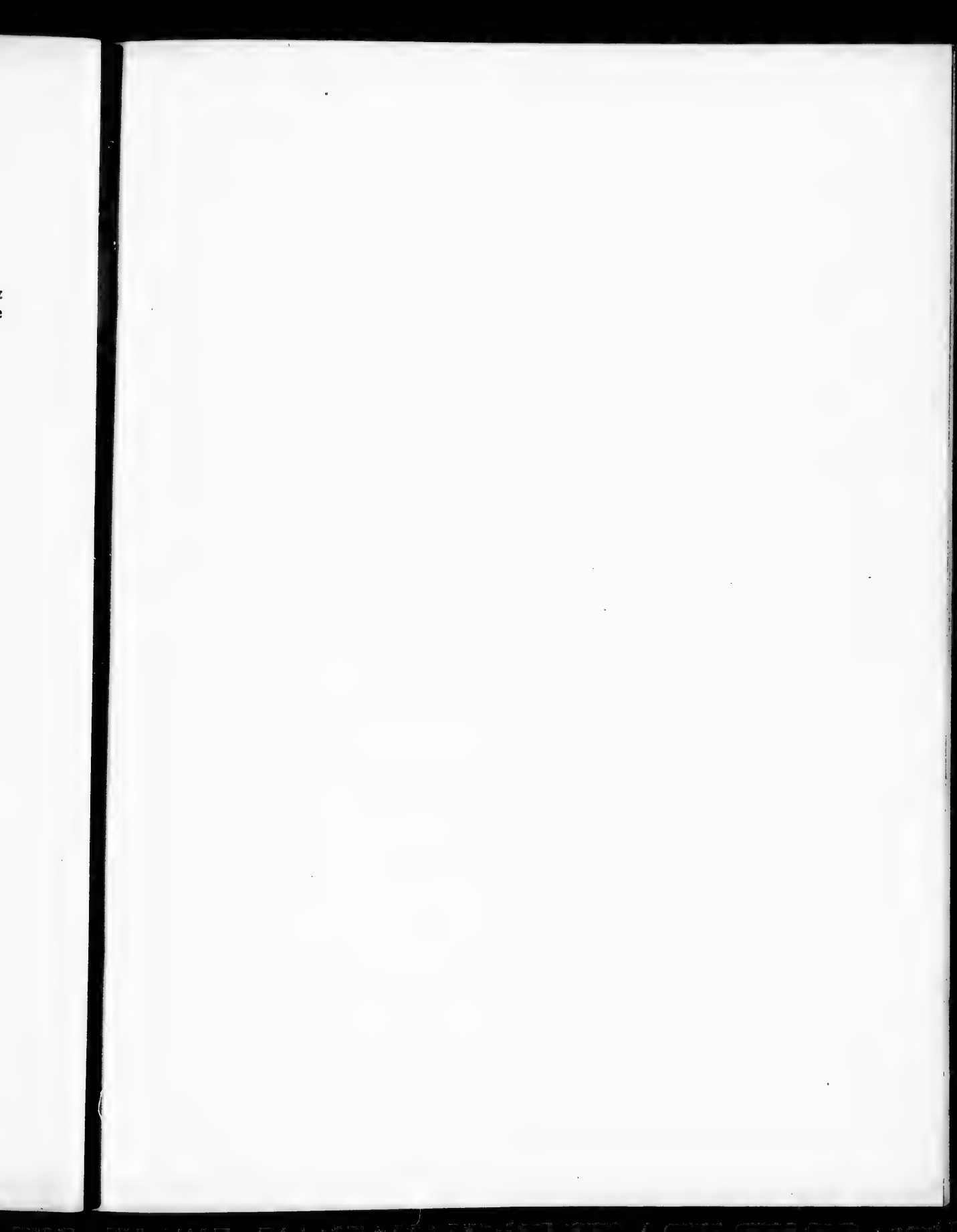
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Calgary, 1 Nov., 1890.

Three months after date I promise to pay to the order of LeJeune, Smith & Co., Three Hundred Dollars, at the office of Le Jeune, Smith & Co. here. Value received.

T. B. LAFFERTY.

A. C. SPARROW.



IN THE SUPREME COURT OF THE NORTH-WEST TERRITORIES.
NORTHERN ALBERTA JUDICIAL DISTRICT.

BETWEEN

No. 1089

LEJEUNE, SMITH & CO., ET AL, Plaintiffs,

AND

T. B. LAFFERTY, ET AL, Defendants.

AND

LEJEUNE, SMITH & CO., ET AL, Plaintiffs,

AND

T. B. LAFFERTY, ET AL, Defendants.

No. 1186

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J. B. Smith, Q.C., for Plaintiffs

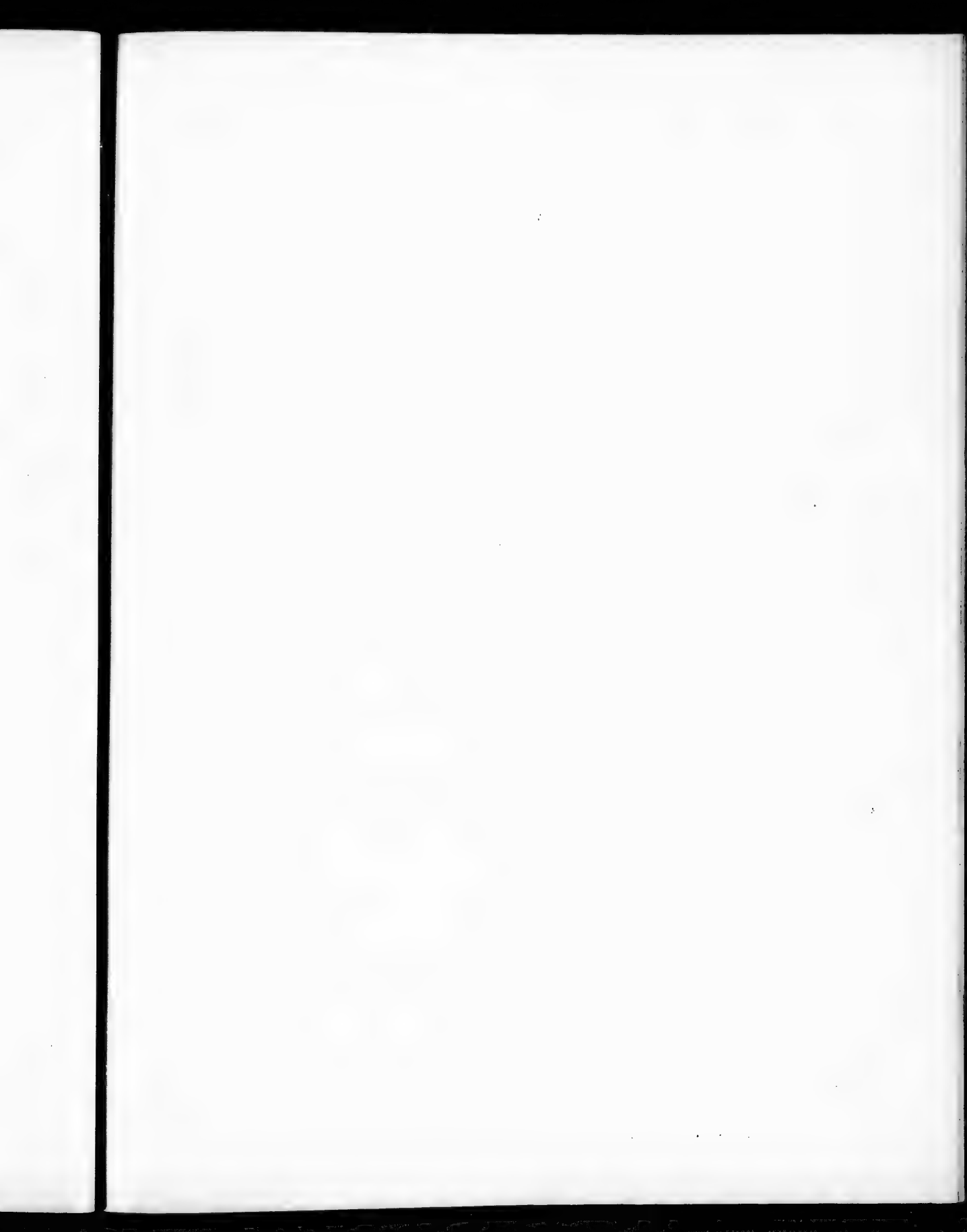
N. D. Beck for Defendants.

The examination of Thos. B. Lafferty taken before me, Edwin R. Rogers, under an appointment dated the 23rd day of April, A. D. 1891, this 27th day of April, A. D. 1891.

THOS. B. LAFFERTY being sworn was examined by J. B. Smith. I am one of the defendants in this action. In the first count this is the note sued on. I know the other signatures, they are of the other defendants. Exhibit A. The signature T. B. Lafferty is mine. Exhibit B. That is my signature on exhibit B and the signature of my co-defendants. Exhibit A was given as a renewal of exhibit B. The plea No. 1 in my Statement of Defence paragraph 1 is
20 not correct. The second plea I have not any knowledge of. In paragraph 3 I have no knowledge whether or not the contents of said paragraph are true. The 4th plea in 4th paragraph is not true so far as I know. I have not paid the note and I don't know whether A. C. Sparrow has or not. The 5th paragraph of the Defence I do not know if it is true or not. I have not any knowledge as to the truth of paragraph 7 in suit 1186 and paragraph 9 in suit 1089. Referring to paragraph 9 in 1186 and paragraph 11 in suit 1089 the note of \$664.50 dated 8th May, 1890 was given to secure four notes of \$313.50, \$100.00, \$171.00 and \$80.00. The renewal exhibit A was a renewal of exhibit B and given for the same purpose, that is of securing the same four notes or their then current renewals. Exhibit B was given as collateral security for the four notes already mentioned.

30 Q. Did you intend to give LeJeune, Smith & Co. additional security for the payment of the \$664.50 represented by the four notes above mentioned, when you gave exhibit B. Was that the purpose for which it was given?

A. I don't see that I can alter my last answer. I gave it for those four notes above mentioned. Pencil writing on exhibit B is in my handwriting and signed by me. If LeJeune, Smith & Co. held more notes against me at that time than the four notes mentioned, the memorandum is broader than I intended it or was even understood by LeJeune, Smith & Co. My explanation is as follows: The day I went into LeJeune, Smith & Co.'s office about exhibit B



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I was in a hurry as I was "pulling out" starting to drive to Cochrane. I said to Christie "I had better note on the back of exhibit B to show what this was given as collateral for, and asked him to look up the dates of the four notes. He said to me "Never mind just now, put it down in a general way as I think those are all the notes you have here and it will take me some time to look up the dates." A. C. Sparrow and myself filled up exhibit B together in my office from a memorandum made by Christie showing the amount of the four notes. This was after Mrs. Sparrow had signed it. She endorsed it in blank for Sparrow. I did not see her endorse it. I never spoke to Mrs. Sparrow that I am aware of about exhibit B or exhibit A. When exhibit A came due Sparrow and I brought a renewal to Christie that was endorsed by

10 H. A. Sparrow and it was not put through. There was one or more of the other four notes due, I think, and I told Christie that I would give him the \$564.50 renewal provided he would renew the others of the four notes that were then due. He refused to do this and I refused to give him the renewal of the \$664.50. This was under instructions from Sparrow. I had not seen Mrs. Sparrow about any of the notes. Sparrow brought all of these \$664.50 notes to me. I gave the last renewal back to Sparrow and he tore it up. It was for three months I think. When the first note was given I could hardly say if Mrs. Sparrow was the owner of or held real or personal estate or both in her own name. (Mr. Beck objects to evidence of this character of Mrs. Sparrow's ownership.) I think from Mrs. Sparrow's statements in Court in one or more lawsuits that she claimed to be the owner of the property they were then living on and are still

20 living on. This was prior to the time the notes were given. At that time, May, 1890, I could not say if Angus Sparrow was indebted to me, as our dealings were mixed up. I never had any dealings with Mrs. Sparrow; I could not say at the time the first renewal was given and the second renewal was made out if A. C. Sparrow was indebted to me. At the present time he claims an amount from myself and Christie. The six notes marked exhibits C 1, 2, 3, 4, 5, 6, for \$80.00 each are signed by me and represent the \$80.00 spoken of as one of the four notes.

Examination of T. B. Lafferty continued this 28th day of April, A. D. 1891.

Exhibit F is the last renewal of lien note for \$313.50 when the first note for \$664.50 was given to LeJeune, Smith & Co.; there were present Christie and myself; I don't think Sparrow was present; I think Sparrow was present when exhibit A was given to Christie for

30 LeJeune, Smith & Co. When I went with the second renewal Christie and I were present this was the note which was not put through. I handed Christie exhibit B and went with the second renewal note to Christie, but am not sure whether Sparrow or I handed him exhibit A as I think we were both present.

Q. Did you tell Christie that Mrs. Sparrow was an accommodation endorser on exhibit A or exhibit B or both of them?

A. Christie requested me to get her endorse exhibit B as collateral to these four notes and it was at his request that I got it. He had frequently requested me to do this. When exhibit B came due Christie asked me to get a renewal of it or get another of the same amount and for the same purpose which I did.

40 Q. Did you not tell Christie that Sparrow owed you a debt in connection with the homestead (the buildings) and that if you could get her endorsement you would get so much of your claim in this way if they had to pay the note?

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A. I may have told Christie about my arrangements about the buildings but I certainly did not tell him that I could get part of my claim in this way. As a matter of fact two of the notes \$80.00 and \$171.00 were my own. As between myself and A. C. Sparrow I was only liable for these two and possibly a small part of the \$300.00 and A. C. Sparrow should have paid the balance. As for the \$100.00 I cannot recollect what was done with the proceeds as between A. C. Sparrow and myself.

The verbal agreement referred to in the first paragraph of the Counter claim was made as follows : The horses were bought in the first place for the purpose of selling to the Can. Pac. Co! Cop'n. (Ltd.) and when we failed to make a sale to them we made this verbal agreement. **10** It was made after the mortgage was made. I was not to guarantee the lien notes but Christie was consulted think, about nearly every sale that was made but I don't think it was a part of the agreement that he should be. The agreement was that Sparrow and I were to make the sales or either of us. This was the agreement with Christie.

Q. In making the verbal agreement was it made between you and Christie individually, or between you and Christie representing the bank?

Question objected to by Mr. Beck as it involves a question of law.

Mr. Lafferty objects to answer in the words of the question but is prepared to answer as the facts took place.

Q. Was that arrangement made between you and Christie, you considering him to be in **20** the position of having an interest in the horses mortgaged other than his interest as a member of the plaintiffs' firm as mortgagees?

A. Yes. I considered him to be equally interested with me in the horses in addition to his interest as mortgagee being a member of the firm of LeJeune, Smith & Co.

Q. How much had you paid in cash and lien notes, the proceeds of the sale of the horses mortgaged, to the plaintiffs prior to the 30th December, 1890?

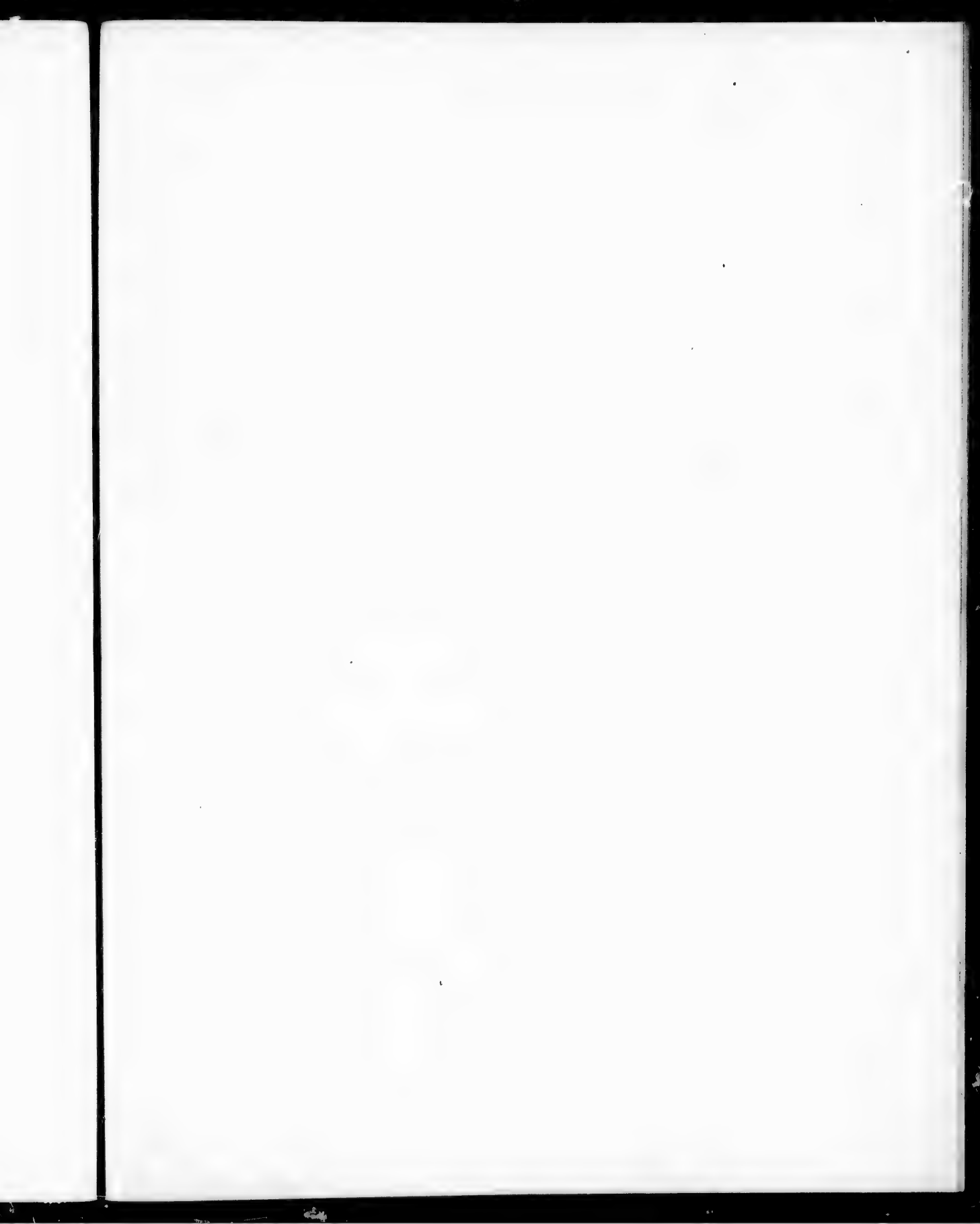
A. I could not tell you the amount exactly but I figured it up to show a balance of the mortgage due less \$1100.

Q. Had you paid to the plaintiffs all the cash and handed over all the lien notes received for horses in the mortgage sold by you up to the 30th December, 1890, on the 30th December, **30** 1890?

A. I cannot answer this now ; I would have to refer to my book ; I think I had or the greater part of it.

Q. At what rate of interest did you figure up in your statement to the 30th December?

A. I computed interest at six per cent. after the maturity of the mortgage.



Q. Had you the cash with you (\$1100) at the plaintiffs bank on the 30th December, 1890 when you allege to have offered the plaintiffs \$1100.00?

A. I had not the cash with me but I had it arranged for.

Q. What did you require the plaintiffs to release and give up to you in consideration of the \$1100.00?

A. The offer (\$1100) was made for all horses in the mortgage that had not been accounted for, that is, in respect of which cash or notes had not been delivered to the plaintiffs. I did not make the offer. I took a party to the bank who was prepared to carry out the arrangement and give the \$1100 for all the horses in the mortgage not accounted for as above and for whom I had arranged to get the money. The party was A. C. Sparrow. He was prepared to carry out the offer. The offer was simply an offer for the purchase of the balance of the horses and I did not then ask for a discharge of the mortgage and the delivery up of any notes they held as collateral to the mortgage. Christie said "he would be damned if he would take it, that he would lose the whole amount sooner than accept the offer."

I mean by the third paragraph of the Counter Claim that the plaintiffs had taken possession of all the horses they could get, that is that they had been able to get up to that time.

Q. Were any of your notes collateral to the mortgage above referred to, made by you in favor of the plaintiffs, in their possession on the 8th May, 1890?

A. They had been given by me to them before that and were not paid in full at that time.

20 Signed this 28th day of April, A. D. 1891 before me

(Signed) EDWIN R. ROGERS,
Clerk of the Court.

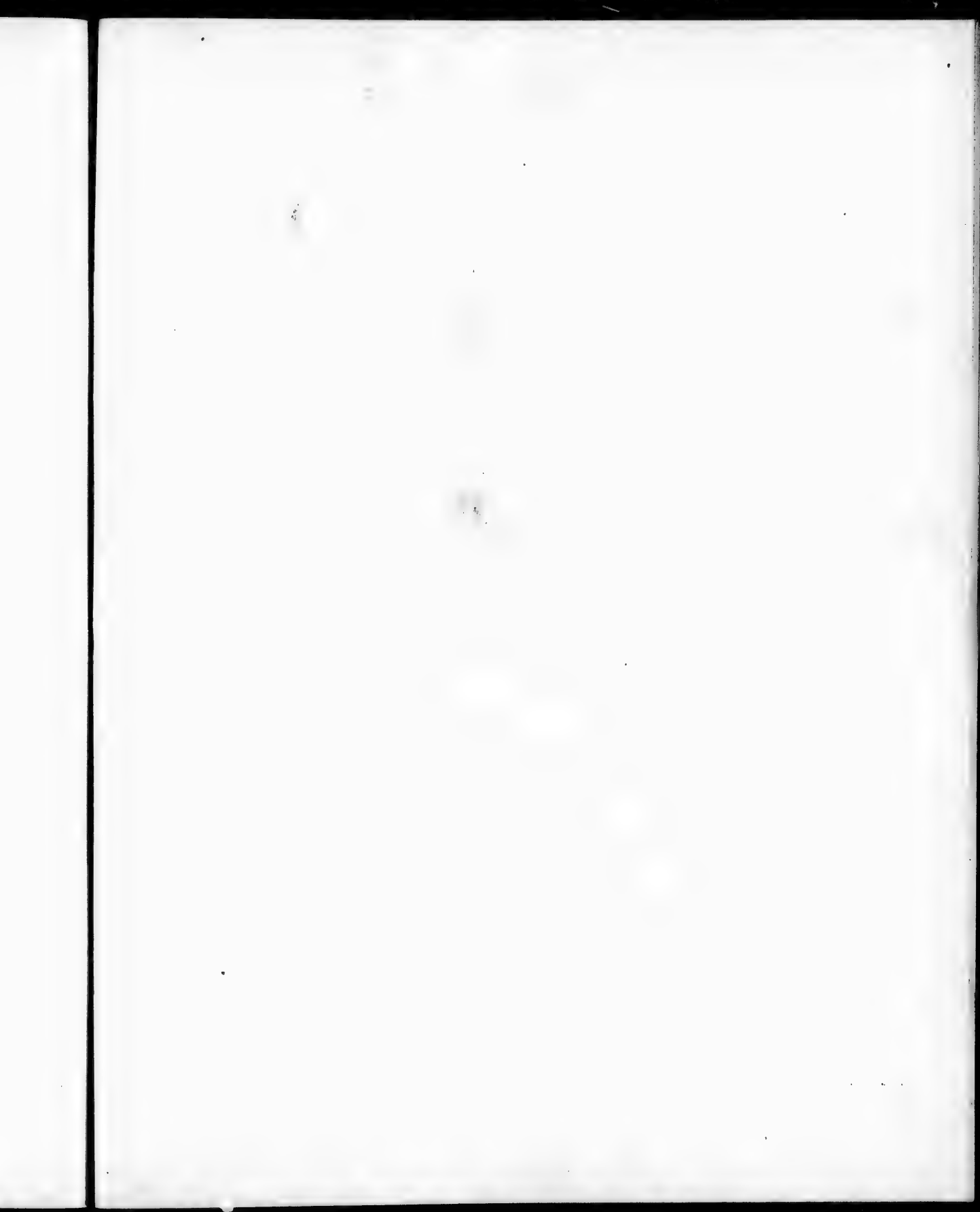
(Signed) T. B. LAFFERTY.

EXAMINATION OF A. C. SPARROW.

The examination of A. C. Sparrow taken before me this 4th day of May, A.D. 1891 under appointment dated the 23rd day of April, A. D. 1891.

Mr. E. P. Davis for Plaintiffs.

Mr. N. D. Beck for defendants.

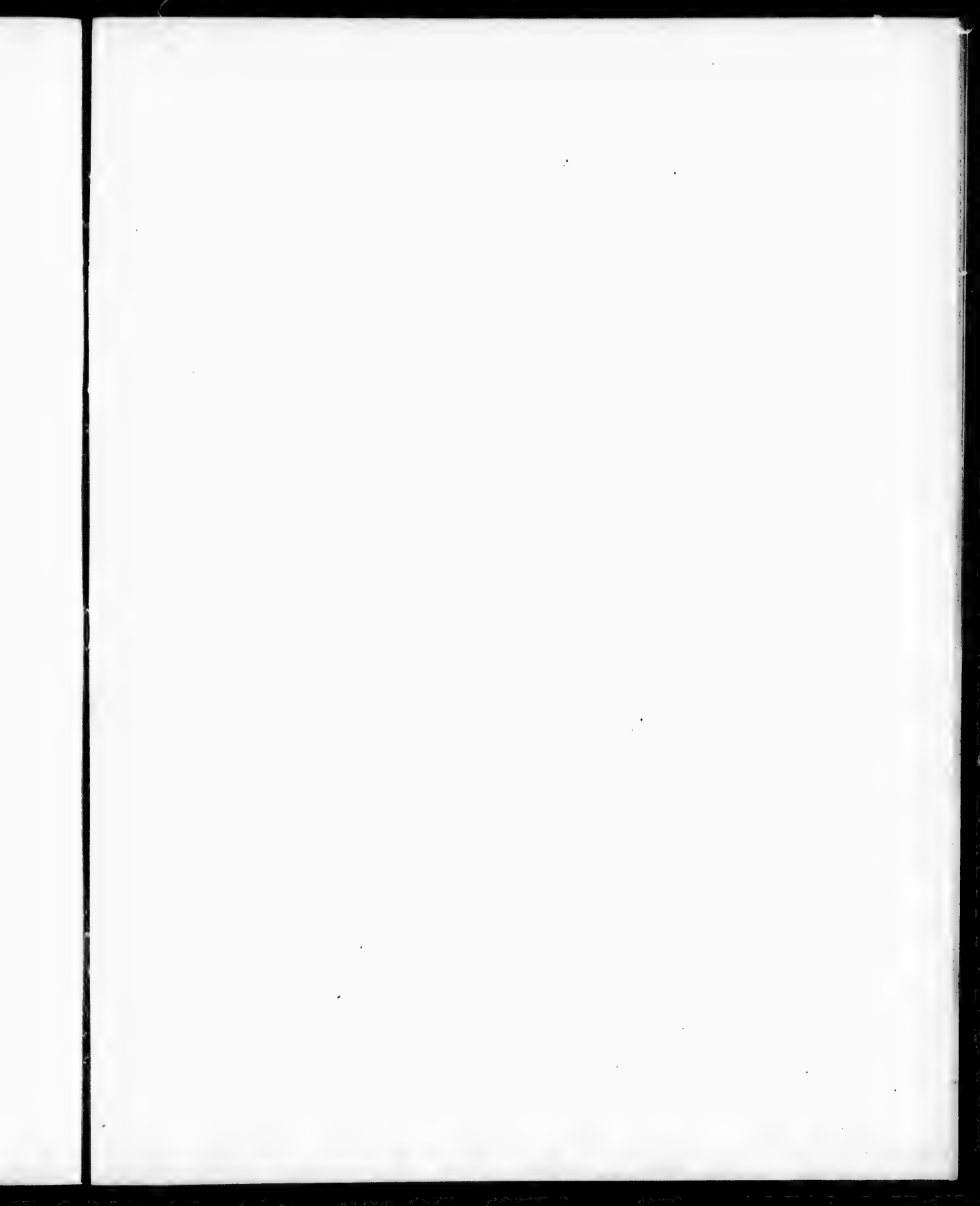


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Mr. A. C. SPARROW being sworn said to Mr. Davis: I am one of the defendants in the above actions. I am the husband of the defendant H. A. Sparrow. The first paragraph of the Statement of Defence to reamended Statement of Claim of myself and T. B. Lafferty is not true in fact. The said two \$664.50 notes were endorsed by me and are notes filed as exhibits A and B in evidence of T. B. Lafferty. I don't know whether the second paragraph of the said defence is true or not. The third paragraph is doubtful, but I guess I had notice all right. The fourth paragraph I would say, as far as I know myself, I did not pay the note, and I don't think the defendant Lafferty did. Exhibit B in T. B. Lafferty's examination was given under the following circumstances, that is, T. B. Lafferty asked me to get my wife to endorse the 10 notes as collateral security to several notes he and I had in LeJeune, Smith & Co.'s bank. One note for \$313.50, one for \$171.00, one for \$80.00 and one for \$100.00. Lafferty told me that Christie had asked him to get this done as the Bank of Montreal had been bothering him (Christie) and Christie afterwards told me the same thing himself. I then got the note endorsed. I got the endorsement in blank and filled in the note. The body of the note was filled in by Lafferty. There was no conversation took place between Mrs. Sparrow and myself when she endorsed the note. I asked her to endorse it and she did it. She did not know for what purpose the endorsement was to be used. She did not know before the suit was begun, what the note had been used for. She did not get any consideration for endorsing the note. It was merely an accommodation on her part. She did not know Lafferty was connected with the note 20 when she endorsed it. It was endorsed for me and was used for the accommodation of myself and T. B. Lafferty who gave the first note to LeJeune, Smith & Co. I do not remember if I was present when it was given. I do not remember receiving the notice of protest for Mrs. Sparrow. The second \$664.50 (exhibit A referred to in examination of T. B. L.) was given as a renewal of the first. When the first note was given it was given on the understanding that it should be carried on until the notes for which it was given as collateral should be paid off. This understanding was between Christie, myself and Lafferty. (Objected to by Mr. Beck on behalf of Mrs. Sparrow.) I do not think the notice of protest of the first note ever reached Mrs. Sparrow. The second \$664.50 was given as a renewal of the other. Christie said that the first note was past due and he could not use it in the bank. He told this to Lafferty and myself. 30 I do not remember from whom the proposition of a renewal came. I got the endorsement from Mrs. Sparrow for the second note before it was filled in. I don't think she knew for what that note was used so far as I know. I don't think she knew up to the time of issuing the writ in this action what the note was used for. It was an accommodation endorsement on her part. She did not receive anything from me for endorsing it. It was for the same accommodation as the first one. She endorsed it for me, she did not know anything about Lafferty at the time. There was nothing said as to any limit on my use of that endorsement. I just put a blank note in front of her and asked her to endorse it, in both cases.

We both gave the second \$664.50 note to LeJeune, Smith & Co. I think Lafferty and I were together. I won't swear to it. I think he gave it to Scott the clerk in plaintiffs' office. I 40 don't remember what was said at the time. We told him it was a renewal of the \$664.50 note and paid the interest on it.

Q. Were the plaintiffs notified that H. A. Sparrow was an accommodation endorser on the second note?



A. They knew that. They knew it when Christie asked in the first place for the note that it was an accommodation. I inferred he knew it as far as I know from knowing what it was given as collateral to. I do not remember of any other reason. I do not remember ever having told him directly. I do not remember ever having heard the plaintiffs told that Mrs. Sparrow was an accommodation endorser on that note. I only know further from talk I had with Christie. The talk was this: Christie told me that the Bank of Montreal were bothering him about our note, Lafferty's and mine, and as a favor to him asked me to get an endorsation to secure the several notes he held. He showed me figures for the amount. I generally receive anything like a notice of protest addressed to Mrs. Sparrow but I have no distinct recollection
 10 of having received the notice of protest on the second note. I don't think it reached her. If it had she would have said something about it. I think there was a second renewal drawn up. I think this was endorsed by Mrs. Sparrow. I expect she endorsed it in the same way as the others because I asked her. I did not present it to him (Christie.) If it was presented to Christie it would be by T. B. Lafferty. I could not swear if it was presented or not. I was present with Lafferty when Christie asked me to get the first note endorsed. I am quite sure Mrs. Sparrow did not know for what purpose the note was to be used nor was there any conversation with her in connection with it at all. I don't remember if I was present at the time Lafferty left the first note at the bank. I do not remember if there was anything particular
 20 renewal of the first. I mean the first note was given as collateral to the several notes mentioned. I think that makes up the amount.

Q. Was the second note left with the plaintiffs as collateral security to anything?

A. It was a renewal of the first note. He could not use the first note in the bank as it was overdue.

Q. Was the second note left with the plaintiffs as collateral security to anything?

A. That is all the answer I can give; it was left there as a renewal of the first one.

Q. Do you know for what purpose the plaintiffs were to hold the second note?

A. They were to hold it as a renewal of the first note.

Q. What did you understand by them holding it as a renewal of the first note?

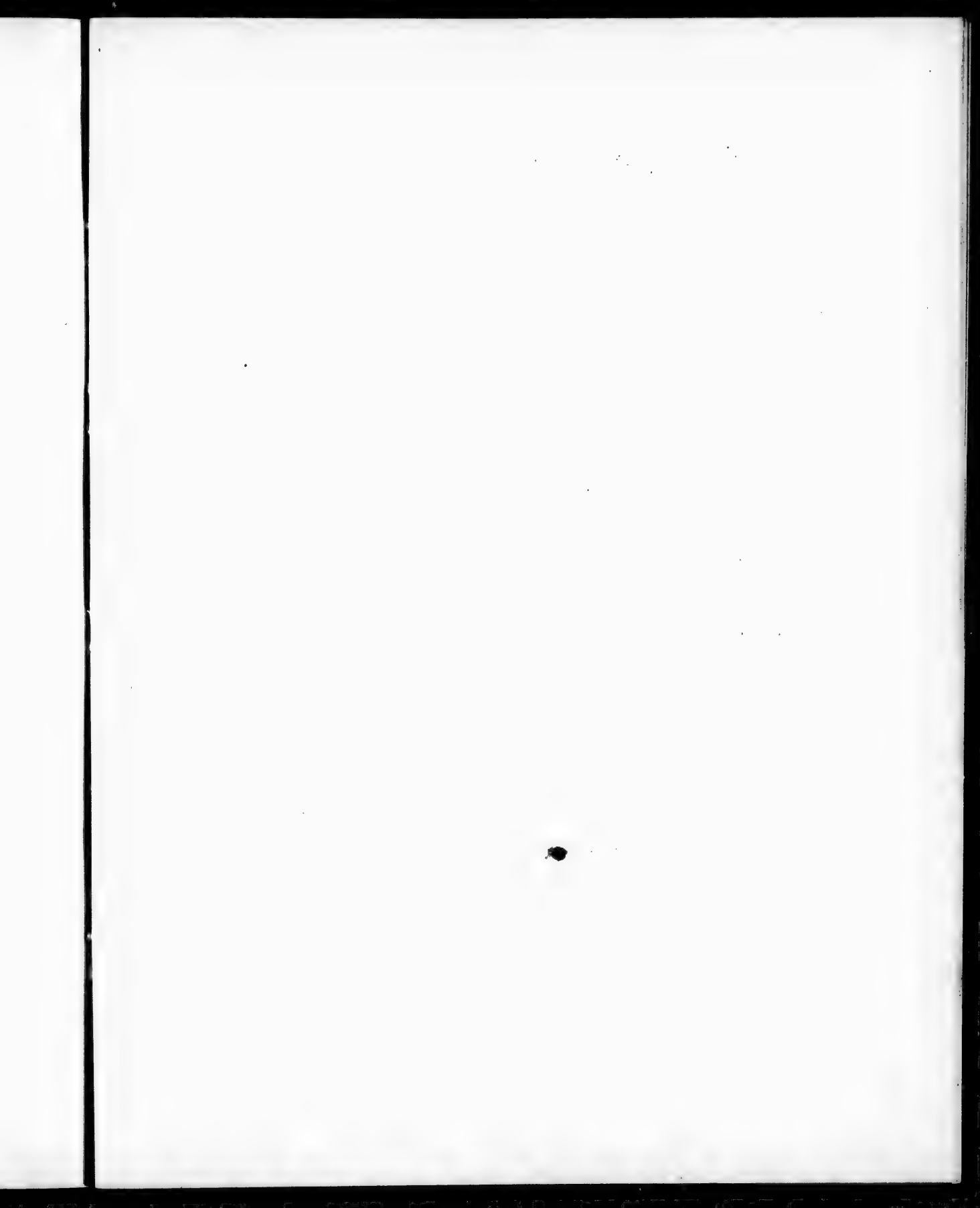
30 A. I don't understand the question.

Q. What did you understand the plaintiffs were to do with the second note?

A. I gave them the renewal note and I did not understand what they were to do with it; there was nothing said as to what they were to do with it.

This closed the examination for the plaintiffs.

No questions by the defendants' advocate.



On reading over the examination Mr. A. C. Sparrow says: We did not pay the interest on the \$664.50 note when given to Scott as it did not bear interest.

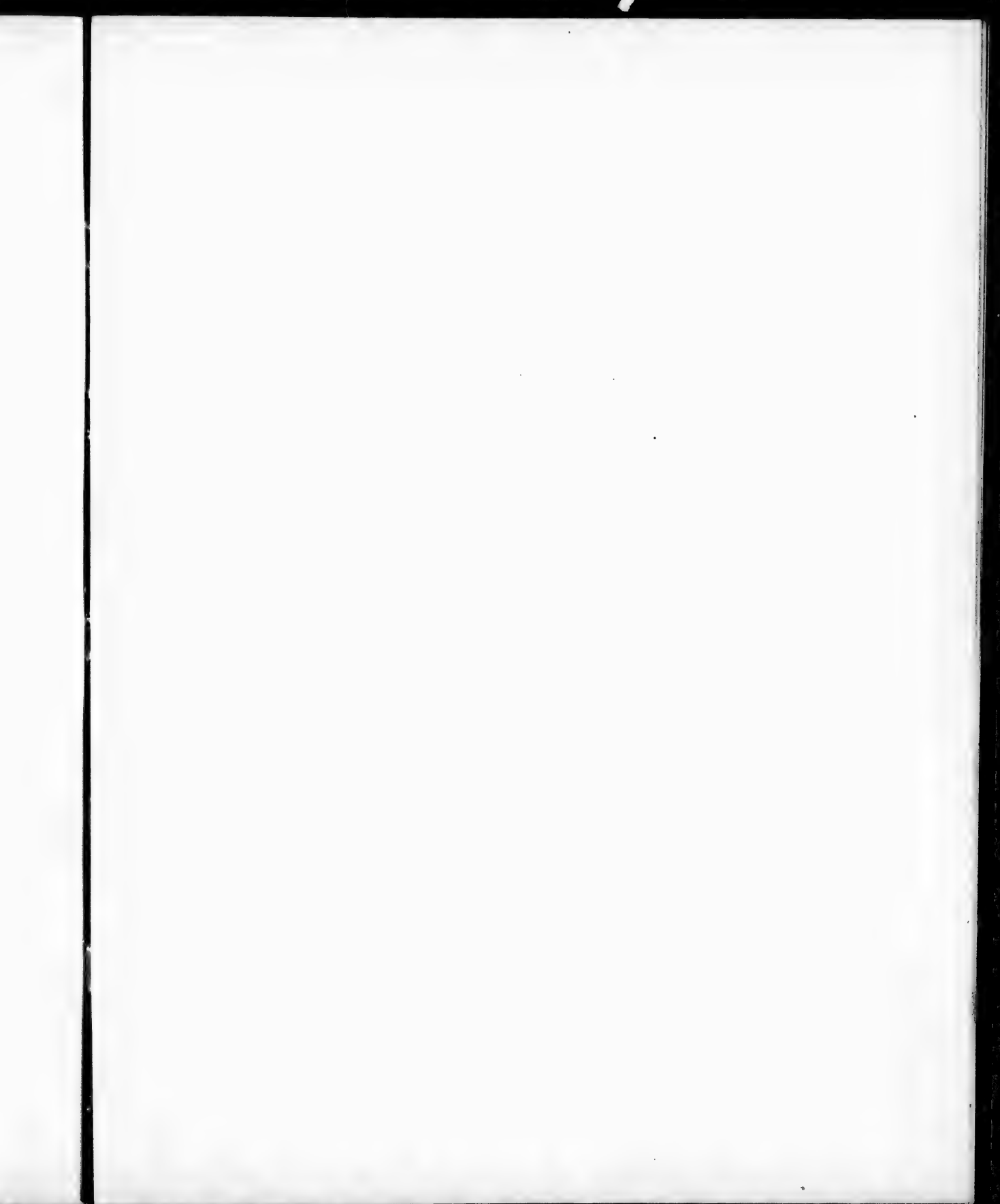
Taken before me this 4th day of May, A. D. 1891.

(Signed) EDWIN R. ROGERS,
Clerk of the Court.

(Signed) A. C. SPARROW.

PLAINTIFFS' AUTHORITIES.

1. Liability of Indorser to Innocent Holder for value.
Byles. 7th American Ed., (side paging) 3
do. 15th English Ed., (top paging) 186, 175, 178, 188.
- 20 2. Married Woman Prom. Notes.
Byles. 15th English Edition (top paging) 71, 72.
3. Accommodation Indorser.
Byles. 15th English Ed. 138, 139, 149, 465.
do. 7th American Ed. (Side paging) notes on 248 and 249.
4. As to Wife's Liability on Separate Estate.
Kerr v. Strip 40 U. C. Q. B., 125.
Lawson v. Laidlaw, 3 Ont. Appeal R 77
Field v. McArthur, 27 C. P. 15. 1 pages.
Leake v. Duffield, 25 L. J. Ont. N. S., 613.
20 { 26 " " " 78.
Sweetland v. Neville, Ont. Repts., Vol. 21, pt. 3, page 412, 1891.
Stogden v. Lee, 1 Q. B. D., 1891, 661.
Griffin v. Patterson. Only holds wife's property not of nature or quality to be liable,
45 U. C. Q. B., 536.
Moore v. Jackson, 16 Ont. Appeal Repts. Same holding as in Griffin v. Patterson.
These two cases not applicable.
5. As to Suretyship.
Propositions. 1. If bank (plaintiffs) knew H. A. S. was accommodation indorser, then she would be a surety, otherwise not. Daniels Negotiable Instruments, Vol. 12, 341 to 347 particularly 345 and notes.
30 2. If bank did not know this, and took note for value in usual course of business, before maturity, then H. A. S. was principal, not surety. Otherwise, if they took it out of usual course of business, without value, etc. Daniel's Negotiable Instruments, 771, 774, 775, 777 and notes.
Healy v. Dolson, 8 Ont. Repts. 691, see page 699; not an authority for defendants in this case, as there, plaintiff knew defendant was a surety only.



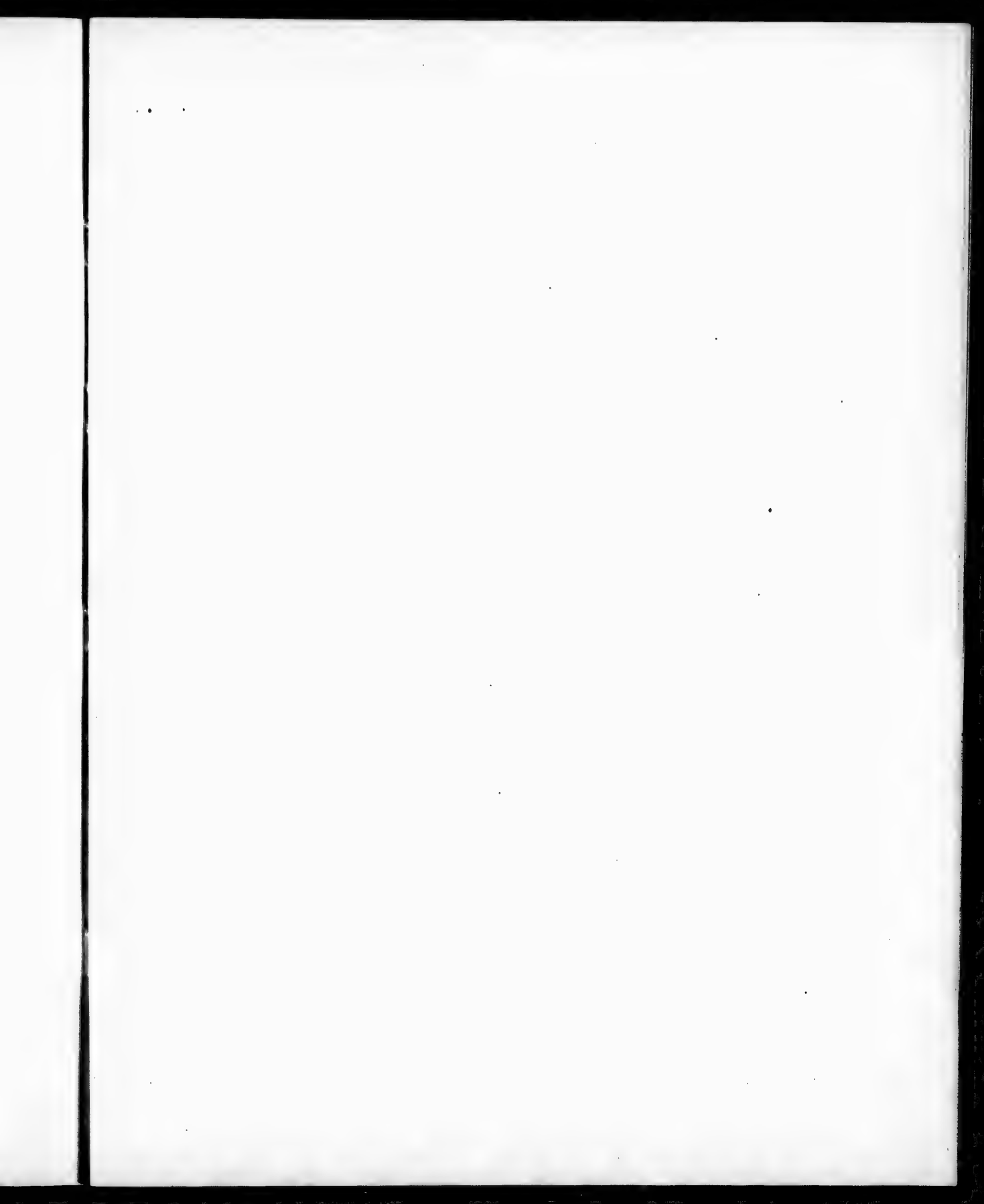
Devaney v. Brownlee, 8 Ont. App. Reports, 355 ; not an authority for defendant, as it differs from LeJeune v. Sparrow in (1) plaintiff knew defendant was an accommodation indorser. (2) Plaintiff gave time to principal after security sued on was due. (3.) No consideration. (4.) No debt owing plaintiffs except the one sued on.

Can. Bank of Commerce v. Woodward, 8 Ont. Appl. Repts. 347. Strong authority for plaintiffs inasmuch as H. A. S. indorsed the note sued on as security for the debt owing by Lafferty & Sparrow, not for the particular pieces of paper representing that amount.

- 10 See also Quebec Bank v. Bryant, Powis, et al. 17 Que. L. Repts. 98. "Abuses of power or betrayal of trust by an agent (T. B. L. & A. C. S.) who indorses a bill for his principal does not affect the recourse against the principal by a holder bona fide for value without knowledge of such abuse or betrayal.

AUTHORITIES OF COUNSEL FOR DEFENDANT.

- N. W. T. Act. Sec. 40.
 Married Women's Property Act. Cap. 125. R. S. Ontario.
 Sec. 20. T. R. P. Act (N. W. T.)
 Chitty's Statutes, Supplement, page 730.
 Darling and Rice. 1 Ont. App. Reports, 43.
 20 Freeze v. McFarlane, 43 Ont. Repts. Q. B. 281.
 Kerr v. Spritt. 40 U. C. Q. B. 125.
 Lawson v. Laidlaw. 3 Ont. App. Reports.
 Imperial Statutes of 1882. Cap. 75, sub-sec. 3 of Sec. 1.
 Ontario Married Women's Act of 1884.
 Byles on Bills. '91 edition, pages 318 and 324.
 Gould vs. Robson. 8 East 576.
 English vs. Darley. 2 Bousanquet against Poultin, 62.
 Same case in 3 Esp. 49.
 Kavanagh on money securities, pages 158 and 159.
 30 Chambers on Bills of Exchange, 3rd ed. pp. 205 and 206 with the authorities cited thereon
 Oriental Corporation against Overend. Law Reports, 7 Chan. Appeals, 142.
 Same case, 7 House of Lords Reports, Eng. and Irish Appeals, 348
 Owen vs. Holmes, 4 House of Lords cases, 997.
 Moore vs. Crawford. Law Reports 2 House of Lords cases.
 Colyar on Guarantees, 369 and 372.
 Blakley agst. Kenny, 17 Ont. Reports, 169.
 Corydon agst. Dickinson, 2 Com. Pleas Div. 46.
 Pollock agst. Everet, 1 Q. B. D. 669.
 Holmes agst. Broomskill, 3 Q. B. D. 495.
 40 Boulton agst. Buchanan, Law Reports, 1 Q. B., 1891.



JUDGMENT OF MR. JUSTICE ROULEAU.

This is an action on a promissory note made by T. B. Lafferty payable three months after date to H. A. Sparrow and endorsed by her and A. C. Sparrow to the plaintiffs for the sum of \$664.50. That note was the renewal of another note made payable, three months after date by T. B. Lafferty to A. C. Sparrow, and endorsed by him and H. A. Sparrow to the plaintiffs for the same amount.

The note sued upon was given as collateral security for the four following notes, to wit: \$80.00, \$171.00, \$100.00 and \$313.50 notes.

To this action the defendant H. A. Sparrow pleaded: that she endorsed the said note at 10 the request of the plaintiffs for the accommodation of the defendants T. B. Lafferty and A. C. Sparrow as collateral security to four certain promissory notes held by the said plaintiffs against the said defendants T. B. Lafferty and A. C. Sparrow for \$313.50, \$171.00, \$100.00 and \$80.00 respectively, which said notes became due and payable respectively on the following dates: \$313.50 on August 25th, \$171.00 on August 15th; \$100.00 on August 27th and \$80.00 on August 22nd, all in the year 1890. That the plaintiffs on the maturity of the four said notes respectively, in pursuance of a binding agreement between them and the defendants T. B. Lafferty and A. C. Sparrow extended the time of payment thereof by the said defendants T. B. Lafferty and A. C. Sparrow and thereby released the said defendant H. A. Sparrow.

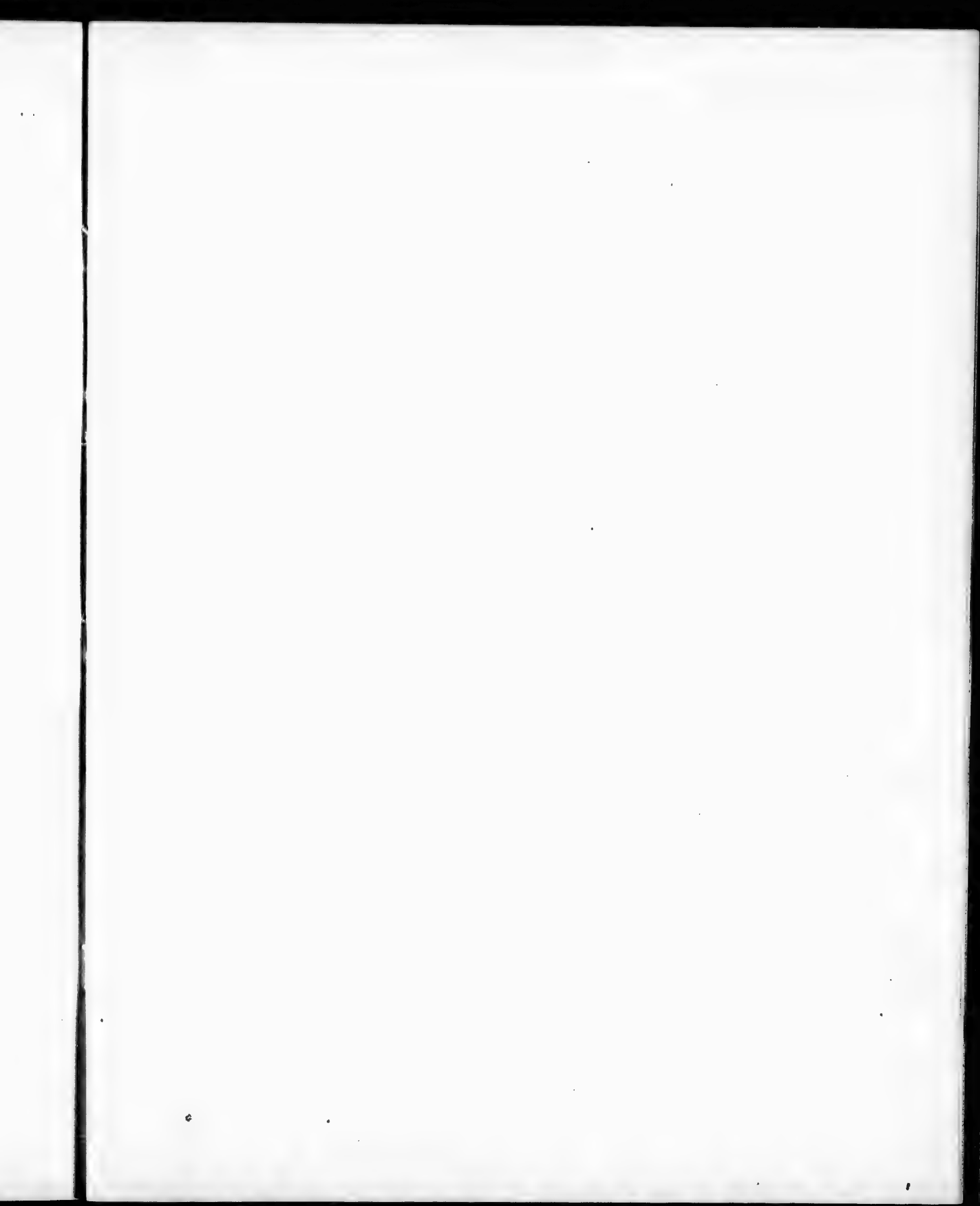
That on the 25th of August last the defendants T. B. Lafferty and A. C. Sparrow paid 20 \$13.50 on account of the said \$313.50 note and gave their renewal for the balance of \$300.00 to the said plaintiffs payable one month after the date thereof and the said \$300.00 note has been renewed by the plaintiffs for the said defendants T. B. Lafferty and A. C. Sparrow from time to time since the said 25th day of August and the said \$100.00 note after being renewed several times was not due until the 5th day of January, 1891.

That the defendant H. A. Sparrow was covert at the time of the endorsing the said note sued on.

That the defendant H. A. Sparrow will object that the statement of claim shows no power or authority from her to the defendant T. B. Lafferty to agree with the plaintiffs that the said note sued upon which the defendant Lafferty was then or might thereafter become liable.

30 That the defendant H. A. Sparrow will object also that in the absence of any allegation that the defendant Lafferty was authorized by the defendant H. A. Sparrow as aforesaid, the 12th paragraph of the amended statement of claim shows that the plaintiffs by a binding agreement without the consent of the defendant H. A. Sparrow extended the time for payment of the several notes to which the note \$664.50 was collateral security and on which the defendant H. A. Sparrow was only an accommodation endorser and a surety and thereby discharged

To this defence the plaintiffs replied, joining issue on all the paragraphs except the 6th on which they reply specially that the defendant H. A. Sparrow at the time of the endorsement and delivery of the promissory note sued upon in this action was and ever since has been possessed of separate estate.



The two other defendants T. B. Lafferty and A. C. Sparrow have consented to Judgment being entered against them and therefore I will not refer to their pleadings except in so far as they relate to the defendant H. A. Sparrow.

There is no question about the facts that exhibit A sued upon was given as a renewal of exhibit B and that the note sued upon, exhibit A as well as exhibit B was given to secure four notes of \$313.50, \$100.00, \$171.00 and \$80.00 or their then current renewals.

Also that Mrs. Sparrow endorsed the blank notes and they were filled in at the office of T. B. Lafferty, and that H. A. Sparrow never had any consideration for the said note; that it was an accommodation note; that T. B. Lafferty never saw or spoke to Mrs. Sparrow about this
10 note.

According to Mr. Christie's evidence the note for \$300.00 was renewed on May 21st, 1890 for three months and when due on 25th August, was renewed for one month and on September 29th was renewed for one month and on November 1st, 1890 was renewed for three months more and became due on the 4th February, 1891.

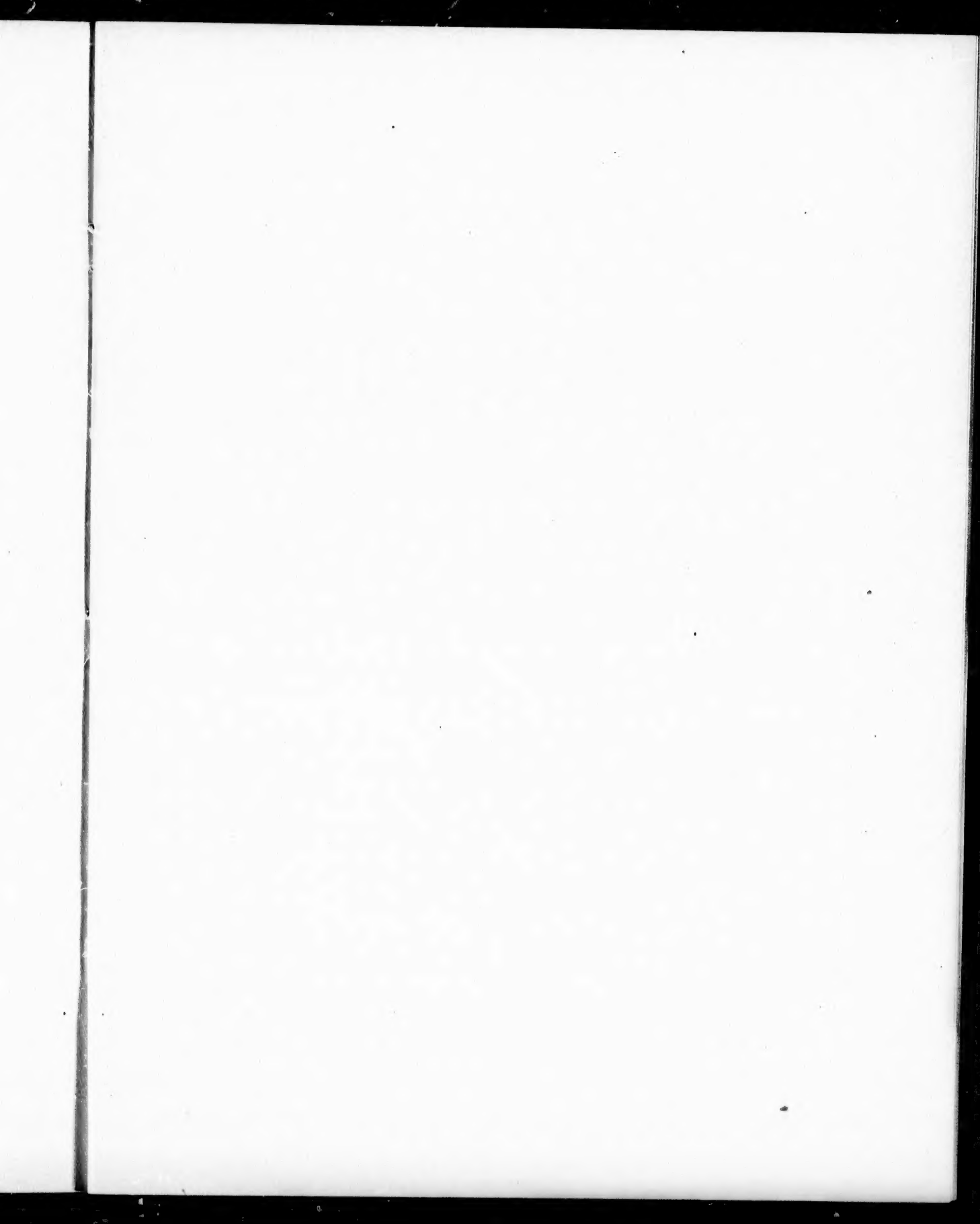
The \$171.00 was past due when the \$664.50 was got, then it was renewed on May 10th and was renewed afterwards for one month, five times; October 21st was the last renewal, and it became due on 24th November, 1890.

The note for \$100.00 was renewed also several times when it became due on the 5th January, 1891, after the last renewal. The fourth note of \$80.00 was also renewed several times till
20 it became due on the 28th November, 1890 after the last renewal.

Besides Mr. Christie in his evidence before me at the trial stated that he took the \$664.50 note in consideration that he would not sue the other notes that became due, but renew them, and further on he adds: "I took the notes exhibits B and A as security for paper then held by me for monies advanced and also that the note sued upon was given as security for the four notes."

The first question raised by the pleadings is this: Does the taking of a new note from the acceptor (who stands in the position of maker of promissory note) payable at a future date, discharge endorsers. Byles on Bills of Exchange, page 324 says: "The taking of a new bill from the acceptor, payable at a future day, discharges the endorsers." Cavanagh on Money Securities
30 lays down the following rule: "If the debt be modified between the creditor and the principal debtor without the consent of the surety, the latter will in general be discharged from all liability on the contract."

In Polak v. Everett, 1 Q. B. D., page 669, Blackburn, J., says at page 673, "It has been established for a very long time beginning with Rees vs. Berrington, 2 Pes. 540 to the present day, without a single case going to the contrary, that on the principal of equity a surety is discharged when the creditor, without his assent, gives time to the principal debtor, because by so doing he deprives the surety of part of the right he would have had from the mere fact of entering into the suretyship, namely, to use the name of the creditor to sue the principal debtor, and if this right be suspended for a day or an hour, not injuring the surety to the value of a farthing,
40 and even positively benefiting him, nevertheless by the principal of equity, it is established that



this discharges the surety although, 19 Ont. Rep. page 169, Blackley vs. Kenney, in that case the same rule as above is followed and Robertson, J., in his Judgment, refers to the case of Davies vs. Stainbank, 6 D. M. and G. (De Gex, MacNaghten and Gordon) page 679, which I think is very much *ad rem* with this case.

There it was held that a creditor who holds a floating guarantee from a surety cannot, without the surety's consent, give time to the principal debtor as to any portion of the debt, without reserving the creditor's right against the surety liable for that portion.

The same principle was upheld in the following cases ; Croydon Commercial Gas Co. vs. Dickinson and others, 2 Comm. Pleas Div. page 46, Holme vs. Burnskill, 3 Q. B. D. page 495 and 10 several other cases cited.

On the other hand all the authorities cited by the plaintiffs to wit : as to first liability of endorser to innocent holder for value, second accommodation endorser and third as to suretyship are good law as far as they apply ; but the propositions laid down by Daniels on Negotiable Instruments, Vol. 2, pages 341 to 347, particularly 345 and notes, also Vol. 1, pages 771, 774, 775, 777 and notes cannot be applied to this case, for the reason that Daniel speaks always of the principal debtor the maker of the note or the acceptor of the bill of exchange. But here the defendant is merely an endorser on a note given as collateral security, and as proven by one of the plaintiffs, H. A. Sparrow was merely an accommodation endorser. Mr. Christie, one of the plaintiffs says in his evidence "when I asked him (T. B. Lafferty) to get security, I did 20 not ask him to get Mrs. Sparrow's name (defendant H. A. Sparrow) ; I told him I must have further security and as a result of that he brought me the note." I do not know by what fiction of law the plaintiffs can make the defendant H. A. Sparrow principal debtor in this case. The plaintiff knew she was only a surety, and therefore could not be treated otherwise, and was entitled to all the rights and privileges of a surety.

The case of the Can. Bank of Commerce vs. Woodward and others, 8 Ont. App. Rep. 347 is clearly distinguishable from this case for the reasons already alluded to. The defendant in the case referred to were makers of the note and not endorsers and therefore were principal debtors and interested in retiring McLagan's paper. In the present case H. A. Sparrow as I stated before endorsed the note sued on on behalf of the maker, T. B. Lafferty, who used it as 30 security only for the notes actually held by the plaintiffs. I think also that the case of Devaney vs. Brownlee and others, 8 Ont. App. Rep. page 355 is a case very much the same as the one under consideration. There is no doubt in my mind that the plaintiffs knew that H. A. Sparrow endorsed the note merely as a surety without consideration and according to the authorities is discharged by the creditors giving an extension of time to the principal debtor.

When the note of \$664.50 exhibit A became due, were the plaintiffs in a position to obtain Judgment against the maker or principal debtor of said note ?

There is no doubt they could not ; the four notes for which exhibit A was given as surety were not due then, because the plaintiffs had renewed them and would have become due long after exhibit A became due.

40 Can the endorser of a note be placed in a more unfavorable position than the maker ; if

